

Supreme Court U. S.

FILED

JUN 29 1976

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APPENDIX

Supreme Court of the United States

October Term, 1975

No. 75-823

RAYMOND BELCHER,

Petitioner,

v.

CASEY D. STENGEL, et al.,

**ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

VOLUME 2 OF 2

Petition for Certiorari filed December 10, 1975

Certiorari Granted April 5, 1976

IN THE

Supreme Court of the United States

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Petitioner,

v.

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**ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Civil Action No. 72-67.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

Eastern Division
(Title omitted in printing)

TESTIMONY OF BONNIE LOHMAN

[p. 560]

Thursday Afternoon Session,
June 13, 1974

BONNIE LOHMAN

called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hughes:

Q. Would you please state your name? A. Bonnie Lohmann.

Q. On March 1, 1971, what was your address? A. 54 West Second Avenue.

Q. I am not sure the jury can hear you. Can you talk as loud as you can. I realize that you are somewhat nervous and small, but try and come up with a loud voice.

Bonnie, on March 1, 1971 at approximately 2:00 o'clock in the morning, when did you leave Jimmie's Cafe? A. As soon as I could get out.

Q. When you say "as soon as you could get out," as soon as you could get out of what? A. As soon as I could get out of the booth.

Q. Why did you leave Jimmie's Cafe? [p. 561] A. Well, because Ray had said before he got up out of the booth, he had told me to 'get the hell out of there.'

Q. Why did he tell you to get out of there? A. Because trouble was starting.

Q. At the time he told you to get out of there, had any shots been fired? A. No.

Q. When you actually did get out of there, had the shots yet been fired? A. Yes.

Q. Bonnie, let's back up a little bit and tell us your activities on Sunday, the 28th. What did you have planned? Did you have any plans to meet Ray or anybody else that evening? A. Yes.

Q. What were those plans? A. Well, John Hawk, Ray Belcher and I were going to go up to Jimmie's for a drink.

Q. Did in fact Ray come to your place to pick you up? A. Yes.

Q. Do you have any estimate of what time it was that that happened? A. Midnight or so.

Q. Then did you go to Jimmie's Cafe? A. Yes.

Q. Did anything unusual happen that evening? [p. 562] A. Yes.

Q. Before the unusual happening—

The Court: In Jimmie's Cafe or before they got to Jimmie's Cafe.

Q. (By Mr. Hughes) In Jimmie's Cafe. A. Yes.

Q. How long was it that you had been in Jimmie's Cafe, to the best of your estimate, before something happened unusual? A. Maybe a half hour.

Q. When you went into Jimmie's Cafe, did you know anybody in the cafe or the bar? A. Francis Compson and her husband.

(Thereupon the easel with chart thereon was set up.)

Q. Bonnie, would you direct your attention to the chart that the clerk has put up which originally was marked Defendants 1 and which I think now has been Joint Exhibit 78. Would you orientate yourself to the particular area—Do you understand what the chart depicts at this time?

The Court: Can you see everything on that chart plainly? A. Yes but I kind of think the bar extends a little farther down than that, and it is a little bit wider than it looks.

Q. (By Mr. Hughes) Generally do you recognize that as a rather accurate description of Jimmie's Cafe on the evening [p. 563] that you were in there. A. Yes.

Q. Would you take the pointer which I will hand you and step up to the chart so that you can use the pointer.

Miss Lohmann, would you point out the booth in which you sat down?

A. (Indicating.)

Q. That basically is the middle booth? A. Yes.

Q. Could you point out in that booth roughly where each of the persons that were sitting there were?

The Court: That is in her party?

Q. (By Mr. Hughes) Yes, sir. A. (Indicating all.) I was here; Francis Compson was there; her husband was here; Raymond Belcher was here.

Q. There were other persons in the bar at that time? A. Yes.

Q. Would you roughly point out where they were? A. Well, there was a little barmaid, Marie, she was around, the bar, approximately sets in here (indicating

all) where Noe, Ruff and Stengel were sitting, and Agnes Morgan and her husband were approximately here, but I think the bar extends down a little farther.

Q. You think the bar moves towards the east a little bit farther than is shown on that drawing—I am sorry. [p. 564] A. West.

Q. Towards the west, towards Summit Street? A. Yes.

Q. Return to your seat for a moment, and with the Court's permission we will leave the chart there because I will use it a little later.

The Court: Yes.

Q. (By Mr. Hughes) During the time that you were seated there with the Compsons, were you engaged in conversation with them? A. Yes.

Q. Did you become aware of any other conversations in the bar? A. Yes.

Q. What did you become aware of? A. Well, one of the three of Noe, Stengel and Ruff said, "He is a cop."

The Court: Meaning who?

A. Well, the only cop in there was Raymond Belcher, and another replied, "No, he is not," and still perhaps another or one of the two said, "Yes, he is. I know him."

Q. (By Mr. Hughes) What next occurred that was unusual? A. Well, Agnes Morgan and Noe got in some kind of argument where he was really calling her some names, and he off and cracked her one across the face. [p. 565]

Q. Would you now step to the chart again and point out the approximate location of Agnes Morgan and Mr. Noe at the time that he did what you indicated he did. A. They would have been where the piano is

and this last booth, forget the bar, but where the piano is and this last booth, they would have been approximately here (indicating.)

Q. So, they would have been as you're describing it about even with the last booth? A. Southeast, yes.

Q. What occurred next? A. Mr. Morgan got up and he got knocked down to the floor and Noe began stomping him.

Q. Do you know who knocked him down? A. I don't remember.

Q. Whereabouts was Mr. Morgan knocked down and being stomped by Mr. Noe? A. He was being stomped right here (indicating.)

Q. You are indicating a position opposite the third booth and slightly into the second booth? A. Yes, sir.

Q. When I say third booth, I am counting as if the first booth is the one nearest Summit Street. A. Yes.

Q. While Mr. Morgan was on the ground and being stomped by Mr. Noe, where was Agnes Morgan [p. 566] A. I don't know.

Q. What were Mr. Ruff and Mr. Stengel doing at this time? A. Ruff, I believe, was still at the bar and Stengel was somewhere over near the juke box, in that general area.

Q. Whereabouts is the juke box again, if you would indicate, or is it the juke box that is indicated on the chart as the juke box? A. Perhaps not that far, but in that general area.

Q. Maybe you better go ahead and point to it, to where you think that Mr. Stengel was at this time. A. Stengel was approximately here (indicating) like this diagram— He was approximately here (indicating) and Ruff at the bar was approximately here (indicating.) They was at the bar.

Q. What happened next? A. Ray started to get up, said something about calling the police, and me to get the hell out of there. He stood up. He had his tear gas mace in his hand, and there was a movement, you know, Noe stopped stomping Morgan and came toward him.

At the same time Ruff jumped him and Stengel jumped him.

Q. What happened to Officer Belcher at that time? A. He was hanging on, so they kind of pulled him, pushed him backwards, and he grabbed ahold of the coat rack and held onto it, and told them to get off of him. [p. 567]

Tear gas had been sprayed. They didn't get off of him. They pulled him; they pushed him; they tripped him, you know, and he let go of the hat rack and was pulled and pushed over towards the juke box where he fell onto the floor.

Then Ruff and Stengel commenced stomping him.

Q. Would you stand up and demonstrate to the jury what you mean by the word stomp. A. They were kicking too. Now, a kick would be a thrust of the foot, you know, kick (indicating.)

To stomp, see that heel, to stomp is to stomp (indicating.)

Q. If you will return to your seat.

By this time Officer Belcher is on the ground and Ruff and Stengel are stomping him; is that your testimony? A. Yes.

Q. What next happened? A. They continued stomping him.

Q. At this time where was Officer Belcher's head? A. South.

Q. Would you return to the chart and take the pointer and point to the approximate position that you would think his head would be? A. His head was here (indicating.)

Q. In other words, you are indicating— A. Feet up (indicating.) [p. 568]

Q. Between the juke box and a table? A. Yes.

Q. Where was his back? A. On the floor.

Q. Where were his legs and other extremities? A. North.

Q. For approximately how long did Messrs. Noe and Stengel continue to stomp him? A. Ruff and Stengel?

Q. I am sorry; Ruff and Stengel. A. Minutes.

Q. Was that plural or singular? A. Plural, a couple, a few.

Q. Can you describe in your own words the extent of the beating? A. He was getting kicked and stomped. He was getting pretty bad.

Q. Was he fighting back at all? A. No. He was trying to cover up. He was trying to protect himself.

Q. Did he continue to have the tear gas in his hand at this time? A. No.

Q. Where had you seen the tear gas? A. When he had gotten out of the booth, when Noe stopped [p. 569] stomping him, Morgan approached him when the other two jumped him, and that's when it was sprayed at the booth.

After that, I don't know what happened to it.

Q. The point of your story now; Officer Belcher is on the ground, his head is up by the juke box, his back is on the ground.

What did you next observe? A. Ruff came down on him and started using his fists and Raymond came up

and this time Stengel was still stomping and kicking him. Raymond came up and shoved him off.

Q. By him you mean Ruff? A. Yes, and—well, Ruff, you know, started—he went back and he started kicking, and he came right back and he got shot.

Q. At that time Ruff got shot? A. Yes.

Q. What happened next? A. Noe stopped kicking Morgan and started in that direction; Stengel got shot.

Q. Started in the direction of Officer Belcher? A. Yes.

Q. Then Stengel got shot? A. Yes.

Q. Then what happened? A. Then the tear gas got me. [p. 570]

Q. The tear gas got you? A. Yes.

Q. Did you see anything else? A. No.

Q. Then what happened as far as you are concerned? What did you next do? A. After everything was quiet, you know, I just had to get out. I couldn't stand it, you know. I left.

Q. Did you have any difficulty getting out of the bar now that the fight was over? A. Well, Agnes Morgan—she passed out by the booth.

Q. Did you have to remove her to get out of the booth? A. No, I just stepped over her.

Q. Was the main action of the fight at or near the opening of your booth? A. Noe on Morgan.

Q. You said that you heard how many shots? A. For sure, two. I saw two and that third shot was probable but that's when I threw myself back in the booth and that tear gas just kind of slapped me in the face.

Q. You saw two shots. How many did you hear? A. Three.

Q. You heard three. In sequence to the best you can, saying bang, could you give the sequence of how long the shots were spaced so that the jury has some feeling of how quick or [p. 571] how slowly the shots were fired? A. (Rapping on witness chair.) Knock—knock—knock. I am not going to say bang.

Q. In other words, somewhat rhythmically? A. Yes, in sequence.

Q. Bang; bang; bang? A. Well, that was too fast, the last one. It was bang; bang; bang.

Q. You saw the first two of these shots? A. Yes. (motion of head in the affirmative.)

Q. She can't get a nod. She needs an answer; yes or no. A. I am sorry, yes.

Q. How would you describe for the ladies and gentlemen of the jury the beating that Officer Belcher was receiving. A. Anyone of those kicks, anyone of those stomps, like his head and his neck, anyone could have killed him.

Of course, you know, I am not medical, but anyone could have killed him, maimed him, anything. They were just with such force and violence.

Q. Bonnie, after you were able to get out of the booth, did you leave the bar? A. Yes, I did.

Q. Where did you go then? A. I went two blocks north to a telephone booth. I called a cab; waited for it, and got home.

Q. Did you have any conversation with anybody after the [p. 572] last remark that was made to you by Officer Belcher before the shooting? A. Could you ask the question again?

Q. Let me put it this way: Did you talk to Officer Belcher again after the time when you just indicated to us that he told you before the shooting to get the

hell out of the booth? A. No, not that I remember because I was gone.

Q. You got out of there as soon as you could and took a cab home? A. Yes, I did.

Mr. Hughes: I think that's all I have, Your Honor.

The Court: You may cross-examine this witness.

Cross-Examination

By Mr. Taylor:

Q. Does the chart appear distorted to you, this one? A. From where I was sitting, the bar seems to extend more down than it does now.

Q. As a matter of fact you had previously testified that this slapping incident between Mrs. Morgan and Noe took place down by the piano, between the piano and the bowling machine; didn't it take place between the piano and the bowling machine? A. I would say the end of the third booth and the piano or the end of the third booth. [p. 573]

Q. That was some distance from you; wasn't it? A. No.

Q. It was not some distance? A. No.

Q. This diagram appears to appropriately represent that distance then? A. I don't understand what you mean.

Q. The distance from the booth that you were sitting in to where the piano and the bowling machine is appears to be correctly represented on this diagram? A. There was a booth and then the piano, yes.

Q. Do you know whether or not the first slap took place from Agnes Morgan or from Mr. Noe? A. I saw Noe striking Agnes Morgan.

Q. Did you see Mrs. Compson then get up to go help down there? A. I really don't know what happened to her.

Q. Did there come a point when Raymond got out, Raymond Belcher got out of the booth and went to get Noe? A. He stood up. He got out of the booth, but I can't say that he went to get Noe.

Q. What would he went to get Noe mean to you in your mind if you had previously said it?

Mr. Hughes: Objection, Your Honor.

The Court: Overruled.

A. I don't understand what you are asking. [p. 574]

Q. (By Mr. Taylor) If he went to get Noe, it would mean he took some steps towards Noe; isn't that correct? A. Not necessarily.

Q. Wasn't your version one time that he reached in his pocket, that he took out his tear gas, and he stepped out of the booth and he went to get Noe; he sprayed the tear gas and it went sort of over everybody in the bar? A. When he got out of the booth, there was commotion. Noe went toward him and his hand came up and I am sure that Noe kicked him, not once, maybe twice or three times, and was jumped immediately by the other two.

Q. The incident with Noe and Mr. Morgan was taking place down near the piano also; wasn't it? A. No. Mr. Morgan was right here (indicating) where I could get out of the booth and Noe had ahold of the hat rack to give himself leverage to stomp that man.

Q. Do you remember having had your testimony taken at the preliminary hearing in this case over at the Municipal Court Building?

The Court: Do you remember that?

Q. (By Mr. Taylor) The first hearing. A. The police station, you mean?

Q. Yes. A. Yes.

Q. I will ask you if you remember, on Page 66 of that [p. 575] transcript, Line 12, the question:

"Go ahead. What did Raymond do?

Your answer, "He got up with the tear gas and went to spray Noe."

Do you remember that question?

A. Yes.

Q. And then the question—

The Court: Ask her if she remembers the answer too.

Q. (By Mr. Taylor) Do you remember giving the answer? A. Yes, I do, I think.

Q. (By Mr. Taylor) "Did he spray Noe?"

Your answer, "Yes. he sprayed the tear gas."

Do you remember that answer?

A. Yes, he sprayed the tear gas?

Q. Yes. A. Yes.

Q. Now, prior to extracting this tear gas and spraying it in that bar, did he identify himself as a police officer? A. No.

Q. But he was going to get Noe and he was going to get him with the tear gas; isn't that correct? A. I think that I assumed that's what he was going to do, but like he just stood up.

Q. Well, you were sitting in the same booth with him. [p. 576] A. He did not say I am going to get Noe. He did not say that.

Q. He didn't say anything then; did he? A. Yes, he did.

Q. When the tear gas sprayed, started—and there is no doubt in your mind that it started moments after he got out of that booth; isn't that correct? A. Yes.

Q. I mean there is no doubt in your mind that the mace was out moments after he got out of the booth and did not first contaminate the air in the middle of the fight? A. I don't understand your question.

Q. You saw spraying of tear gas just after he got out of the booth; isn't that correct? A. Just after he got out of the booth he was jumped by Stengel and Ruff too.

Q. We will worry about that later. I am worried about the tear gas right now. Just as he got out of the booth, the air was contaminated with tear gas from his cannister; isn't that your observation at that evening? A. Not immediately.

Q. How much less than immediately? A. Well, when he was jumped and when Noe went toward him, it started coming out.

Q. It was out then right away; it did not come out when [p. 577] he was in the fight over by the juke box for the first time? A. No, it didn't come out over by the juke box. I didn't see it over by the juke box.

Q. In fact your testimony would be that he did not even have the tear gas cannister in his hand when he was over by the juke box; isn't that correct? A. Yes.

Q. You never heard him identify himself as a police officer when he left the booth? A. No.

Q. Don't you remember Mrs. Compson going down to try and settle this little slapping incident herself? A. I really don't remember.

Q. But it could have happened? A. It could have.

Q. You say you saw these shots as well as heard them? A. Two of them.

Q. Those would be the bullets that hit Stengel and Ruff? A. Not in that order.

Q. Ruff and Stengel? A. Yes.

Q. Which way was Stengel facing at the time you saw that firearm discharge? A. North.

Q. In regards to Belcher, was he facing him and kicking [p. 578] him at that time, or as you characterize it? A. Belcher was on the floor.

Q. You saw the gun, his hand; was he, Belcher, laying on the floor and did you see him acquire possession of this firearm? A. I really don't remember how he got it or, you know—

Q. But there came a point in time in which you saw the weapon in his hand? A. Yes.

Q. You saw the weapon at the point in time that it discharged? A. Yes.

Q. If you saw the weapon, you also saw Stengel? A. Yes.

Q. You also saw Belcher? A. Yes.

Q. Where was Stengel in relationship to Belcher at that point in time? A. Still kicking and stomping at his head and shoulders.

Q. Right at his head and shoulders down there kicking and stomping him? A. I don't know about down there. His legs were down there and his feet.

Q. What would you say was the distance between the firearm that you observed in the hand of Mr. Belcher and, say, the [p. 579] chest of Mr. Stengel. A. I couldn't even begin to give an approximation of feet or inches. I am not a good judge of distance.

Q. You can judge if that's a foot. Was it less than a foot? A. At least.

Q. I mean was Belcher still on his back? A. Yes, he was.

Q. Facing up and Stengel was over him, stomping him? A. Yes.

Q. At his head? A. Yes.

Q. You are sure that Mr. Stengel wasn't shot in the back? A. I didn't say that.

Q. If you observed him over him and kicking him at the time the firearm discharged, where did the bullet strike? A. It struck up his back.

Q. Up his back. Then Stengel was not facing him?

Mr. Hughes: Objection, Your Honor. I think she has testified that Mr. Stengel was facing north.

The Court: Let me ask this witness a question. Miss Lohmann, when Mr. Belcher was on the ground, was on the floor, wasn't he when he got his gun out; is that right? A. Yes. [p. 580]

The Court: At that moment, and just an instant before, you heard the first or the second shot fired, was Casey Stengel stomping Mr. Belcher?

A. When Ruff was shot, he was still stomping Mr. Belcher.

The Court: Was Ruff shot before Stengel?

A. Yes.

The Court: You saw Ruff shot before you saw Stengel shot?

A. Yes.

The Court: Stengel was shot in or within a second or two after Ruff was shot; is that right?

A. Yes.

The Court: Was Mr. Belcher on the floor at that time?

A. Yes.

Q. Was he on his back? A. Yes.

Q. Was Stengel stomping Belcher when Belcher shot Ruff? A. Yes.

Q. Was Mr. Belcher's head facing up or was he facing down or was he on the side? What was the position of his head with relation to the floor. A. When?

Q. When he shot Ruff and a second or two later shot Stengel? [p. 581] A. When he shot Ruff his head would have been up like this (indicating).

Q. Was it up off the floor? A. It could have been.

Q. In relation to Belcher's head, let's say Belcher was facing this way, was Stengel facing toward him or facing away from him or facing to the side. A. Stengel was over him.

Q. Was over him. A. He would have been on the floor. Raymond —

The Court: Belcher would have been on the floor Stengel was standing—Was Stengel facing Belcher toward him, looking down into his face and stomping him, or was he stomping him turned away from him?

A. He was down on him like here is his head down here (indicating), his head would have been here (indicating).

Q. As best you remember, was Casey Stengel facing Belcher when he was shot? A. When Ruff was shot, Noe made the move, stopped kicking Kyle Morgan and went toward —

Q. I want to come back. You have just testified that Belcher shot Ruff first and a second or two later he shot Stengel. When he shot Stengel, was Stengel standing up and Belcher was on the floor; correct? A. Yes. [p. 582]

Q. At that instant, just the instant before Stengel was shot, was Stengel standing over Ruff, standing over Belcher facing him, or was he faced away, or was he faced to the side? A. That's what I am saying. You see, after Ruff was shot, that's when Noe stopped kicking and stomping Morgan and went toward them.

When I turned back, that's when Stengel got it up the back, but he was still stomping him when Ruff got shot.

Q. So, you are saying now that when Stengel got shot, he was not facing Belcher? A. Yes.

The Court: Go ahead.

Q. (By Mr. Taylor) If he wasn't facing him, he wasn't any longer administering any of these alleged stompings to him; isn't that correct? A. When Ruff got shot, Noe made the move and I was watching Noe and then turned to see the shooting up his back. Noe's heel was still on Raymond.

Q. Oh, his heel was still on Raymond. A. You know, like the collarbone, the shoulder.

Q. Belcher's laying on the floor and as you now describe it, Stengel has his foot on his collarbone like this (indicating) and his back is to him; is that the picture you are trying to present now? A. Back side.

[p. 583]

Q. Well, Stengel standing erect or bent over? A. He was going —

Q. He was going like this (indicating)? A. You know more about fights than I do. You are a man.

The Court: Let me say something to you. We don't want any observations like that. It isn't necessary.

The Witness: Yes, sir.

The Court: All you have to do is to answer the questions of counsel to the best of your ability.

Go ahead.

Q. (By Mr. Taylor) You say you recollect that the heel was placed on Mr. Belcher's collarbone and the back of Mr. Stengel was exposed to Belcher; isn't that correct? A. Yes.

Q. That is the story. How much distance — Where was Belcher's arm; how high was it elevated above or below the ground at that point in time? A. I don't remember.

Q. Are you sure you really observed the incident you have just testified to? A. Yes, I did.

Q. Could you explain to me how his end of the weapon, if he had it the way you just testified to, could be within six inches of the flank of the back of Mr. —

Mr. Hughes: I object, Your Honor. [p. 584]

The Court: I will sustain your objection to the form of that question.

Q. (By Mr. Taylor) That is your testimony as I just stood here and went through it and you are sure you remember that.

Mr. Hughes: Your Honor, I don't know what he means.

The Court: I will sustain your objection to that question also.

Q. (By Mr. Taylor) You heard three shots in that bar; is that your testimony now? A. Yes, I saw two.

Q. You saw two; you heard three? Now, did you hear any additional shots at a later point in time? A. I could have. I don't recall.

Q. There came a point in time when you finally extracted yourself from this booth; isn't that correct? A. Yes.

Q. You walked outside; did you? A. Yes.

Q. Did you go out the front door or the back door? A. I went out the front door.

Q. Did you see anything unusual when you went outside? A. Unusual?

Q. Yes. A. Well, when my eyes cleared, Noe was laying on the [p. 585] ground and asked me to help him to get him out of there before the police came. Is that unusual?

Q. Did you have a conversation with Noe? A. I didn't say anything.

Q. Does the chart correctly portray the location of his body as you best remember it? A. Yes.

Q. That's some 14 feet from the door; isn't that correct? A. I don't know. It is a sidewalk.

Q. You came out the door. A. I don't think it's that wide, but if you say so.

Q. You saw Noe out there and he appeared to have some kind of wound; isn't that correct? A. I don't recall seeing a wound.

Q. You never heard any shots that transpired outside? A. I don't recall any.

Q. You heard three shots and in relatively quick order, and that was the only firearms you heard discharged that evening? A. To the best of my knowledge; to the best of my memory.

Q. At the time you finally extracted yourself from the booth, there was no longer any commotion; was there? A. Things had quieted down. That's why I was getting out of there.

Q. You had been a witness to a double homicide; isn't that correct? [p. 586] A. Yes.

Q. You were in the company of an off duty police officer? A. Wait a minute. You said double homicide. Homicide is murder. I would say a double shooting.

Q. You just got out of the booth, walked out to the front door, saw another man who requested help outside and walked up to a phone booth. A. Sir, the last thing in my mind was get the hell out of there and that's what I was doing. I had to get out.

Q. Why did you have to get out then? A. Because the tear gas was burning.

Q. All the other witnesses were around; you got outside, you got fresh air there; didn't you? A. Yes. Yes, I did.

Q. Did you see Raymond Belcher outside? A. I don't recall seeing him.

Q. Never came back to talk to Raymond Belcher whatsoever? A. No, I did not go back into the bar. I just went up the street.

Q. If you didn't see Ray Belcher outside, did you see him outside? A. Not that I recall.

Q. Then you must not have left the bar until after he came back in? A. I wouldn't have seen him.

[p. 587]

Q. Well, there is only one door to the front of this establishment; isn't there. A. Yes.

Q. At the point in time that you went outside, Belcher was no longer outside? A. As far as I know, he was not outside.

Q. So that means that when this man went out the door and traversed this area of at least 14 feet, Belcher was outside, something happened out there, and Belcher evidently came back in before you got outside? A. He probably did because I don't recall seeing him outside. I don't recall seeing anybody as I made my way out the door either.

Q. As a matter of fact Belcher came back in; didn't he? A. He probably did. It was his voice I heard on the telephone calling the police, but I did not see him, sir.

Q. Then after this incident happened outside, you were still in the bar at the point of time you heard Raymond Belcher go to the pay phone on that south wall and call for the police? A. I was what?

Q. Still in the bar at that point in time. A. No, I was on my way out.

Q. Which means Mr. Belcher came back into the bar? A. But I did not see him come back in.

Q. You heard him? [p. 588] A. Yes, or I heard whose voice I thought was his.

Q. Did you see him picking up casings inside the bar? A. No, sir, I did not.

Q. Didn't even talk with him? A. No, sir.

Q. Had you been dating Ray Belcher? A. We had gone out to a few places on occasion with each other.

Q. With each other in the presence of some times Mr. Hawk? A. John was there, yes.

Q. But on many occasions, it was just you and Ray; isn't that correct. A. On occasion, yes.

Q. You were 20 years old at this time?

Mr. Hughes: Objection, Your Honor.

The Court: Come up here, gentlemen.

(Thereupon followed a discussion off the record.)

The Court: There is an objection to the last question on the record. I will overrule the objection.

The question is: Were you 20 years old at this time; that is in 1971. A. Yes.

The Court: You are 24 now?

A. Twenty-three, 24 this year.

Q. (By Mr. Taylor) You went two blocks, made a phone call [p. 589] and got a cab and went home; is that right? A. Yes.

Q. You lived in an apartment by yourself at that time? A. I lived by myself, yes.

Q. You had socially also been out with Mr. Hawk; isn't that correct? A. Yes.

Q. Was Mr. Hawk your friend or was Mr. Belcher your friend? A. They are both friends of mine.

Q. Then there came a point in time that evening when Mr. Hawk appeared at your apartment; isn't that correct?

The Court: Come up here, gentlemen.

(Thereupon followed a discussion off the record.)

The Court: Come up again, gentlemen.

(Thereupon followed another discussion.)

Q. (By Mr. Taylor) Do you remember having given a statement at 6:42 A.M. on the morning of this incident after you arrived at police headquarters? A. I didn't know what time it was.

Q. Do you remember having given a statement at that time? A. Yes.

Q. I will ask you if you remember this question, and I want to confine it to this mace and when it came out:

"Q. What took place when he got up out of the booth?" [p. 590] Do you remember that question? A. Yes.

Q. I will ask you if you remember the answer you gave at that time, "Tried to use the tear gas on the blonde guy and was spraying it at him."

Do you remember giving that answer that morning just a few hours after this incident? A. Yes.

Q. Is that the correct version of what happened when Raymond got out of the booth? A. Well, Noe went toward him, yes, he did spray the tear gas.

Q. Do you remember the question:

"I want to know what happened at the bar. Did somebody hit someone?"

"The blonde guy hit the woman with the glasses across the face."

Do you remember that question and the second sentence I read to you was — A. Yes.

Q. "and she let out a yell and her husband came off the blond guy, came at him. The blond guy hit him, knocked him down. Raymond got up with the tear gas."

Do you remember that answer: A. Yes. [p. 591]

Q. Did your husband arrive there that night? A. Yes, he did.

Q. Or that morning rather. A. Yes.

Q. Do you remember approximately when he arrived? A. Approximately about 15 minutes before I got off work. [p. 593]

Q. Do you know Raymond Belcher, Mrs. Compston? A. I know him as a customer, and that's all.

Q. Do you know Bonnie Lohmann? A. As a customer.

Q. Were they there that night? A. Yes, they were.

Q. Do you remember approximately when they arrived? A. Approximately 20 minutes or something like that before. Maybe I saw them once or twice a month. I mean they weren't customers that came in every night.

Q. Did you see Mr. Casey Stengel there that night? A. Yes, I did.

Q. Were you sitting with Mr. Belcher and Miss Lohmann? A. Not when the incident happened, no.

Q. Were you at any time? A. Yes, I had sit down for just a few minutes to say hello.

Q. Was your husband with you at that time? A. My husband was sitting in the booth waiting for me.

Q. Mrs. Compston, can you see the diagram here which is a joint exhibit, Joint Exhibit 78. Can you see that all right or would you like to come down off the stand and look at it? A. Wait until I see what you are gonna ask me. Yes, I can.

The Court: Stand over to the side so you are not [p. 594] between the chart and the members of the jury.

Q. (By Mr. McGrath) Could you take this pointer and point—Is that a fair and accurate representa-

tion of Jimmie's Bar as you know it to exist? A. Well, there is a shorter distance from where you come off the sidewalk.

Q. It would appear shorter than is on the chart? A. Right.

Q. Is the interior of the bar basically a fair representation with the noted things of the bowling machine, piano and the bar? A. Here is the bowling machine (indicating). Here is the juke box (indicating) and where the two bodies was laying Raymond Belcher was between.

Q. Wait for the question, Mrs. Compston.

Could you just tell me what booth you were sitting in? A. I wasn't sitting in a booth.

Q. When you first told me that you did sit down with them for a minute, where was that? A. That booth (indicating) the second booth in from the piano.

Q. The second booth in from the piano or from the wall which is closest to Summit Street? A. Yes.

Q. Did anything unusual occur that night, Mrs. Compston, [p. 595] anything unusual happen that night? A. Yes.

Q. Could you tell me what that was? A. It was a dispute between a lady —

Q. Do you know who the lady was? A. I can tell you her name, Agnes Morgan.

Q. Go ahead. A. — and her husband got up to take the dispute —

Q. Could I back up a minute. When you said there was a dispute, who was involved in the dispute? A. The blonde headed boy and I will try to pronounce his name wrong — Noe.

Q. That's fine. A. It was something about her and they were by the bowling machine when this happened,

something about her, and she slapped his face and he shoved her and she hit the piano and naturally her husband got up to take her part.

Q. When you say she hit the piano; did she go off her feet? A. Yes.

Q. She was knocked down? A. She was shoved down.

Q. What's her husband's name? A. Kyle Morgan.

Q. What did he do then? [p. 596] A. He naturally got up to take her part.

Q. What ensued then when you said take her part; do you know what happened then? A. The two boys were stomping him.

Q. What two boys? A. The two dark headed boys. This is as close as I can come to tell you, and that is when Mr. Belcher got up out of the booth.

Q. When you say they were stomping him, could you tell me what you mean by that? A. Not kicking; stomping. When you stomp somebody, you stomp them with your whole foot.

Q. What, if anything, happened next after the stomping? A. I don't know which one — and I can't say which one— when Belcher got up, he got hit and that's where he landed, by the juke box, and that table.

Q. When you say he, you are referring to Belcher got hit? A. Yes.

Q. What happened next? A. He used his mace as far as this goes.

Q. That's a tear gas mace? A. Right.

Q. What happened to Officer Belcher after he fell down or was knocked down by the two boys? A. He was using his mace and then he used his gun. [p. 597]

Q. Was there anybody around him after he fell down? A. Yes.

Q. Who? A. The two dark headed boys.

Q. What were they doing? A. They were using their boots on him.

Q. What do you mean by that, Mrs. Compston? A. Their shoes, boots. I mean like if I had a pair of boots on, and then he started shooting.

Q. When you say they were using their boots, what do you mean by that; were they kicking him? A. They were kicking him; they were stomping him, and he didn't have room to get up. There is not enough room.

Q. How was he positioned if you could describe it? A. He was laying with his head to the juke box and there was a table there. He was laying between the table and the juke box and there is no way that somebody could get up.

Q. What happened next? A. After the tear gas really cleared out of there — and I am not real sure what happened outside — I can't tell you that.

Q. You said you heard shots. Could you describe that, please. A. They were in a matter of seconds.

Q. How many shots did you hear? [p. 598] A. I heard two or possibly three. I mean, look, I can't be sure. There could be between two or three.

Q. What did the boys do after you heard the shots? A. They were both laying on the floor, and the one, the other one either started out the door or tried to pull Belcher out the door, one of the two. I can't even tell you exactly the truth about that.

Q. Did you feel any effects from the tear gas? A. Yes.

Q. Where were you located when you heard the shots and when Mr. Belcher got knocked down. A. I was half-way from the front to the back of the bar. I

was gonna try and get to the telephone and where the telephone was at is up to the front. There is no way that I could call the police.

Q. Did you see Mr. Belcher after the shots were fired? A. Yes.

Q. Where was he? A. He came back in. I had already put the dime in the telephone and I was calling the police, and I did not see him until we were at the police station. It was some time about 5:00 o'clock in the morning.

Q. Did he then call the police? A. He is the one that did call the police.

Q. You put the dime in the phone? [p. 599] A. I did.

Q. Did you ever see Bonnie Lohmann after the shots were fired? A. No, I didn't.

Q. Did you see her in the bar afterwards? A. No.

Mr. McGrath: Excuse me, Your Honor.

(Discussion at defense counsel table.)

Mr. McGrath: I have no further questions at this time, Your Honor.

The Court: You may cross-examine, Mr. Taylor.

Cross-Examination

By Mr. Taylor:

Q. As I understand your testimony, you first noticed the air was contaminated with tear gas at some point in time after Mr. Belcher was knocked down over by the juke box? A. Right.

Q. You never observed any tear gas prior to that time? A. No, I didn't.

Q. You were located in this bar at the time that this thing transpired at a distance towards the back of the bar at that time? A. I was half way back to the bar.

Q. At any time were you struck in these altercations? [p. 600] A. No.

Q. Noe never struck you? A. No.

Q. Hadn't you went back to try and break this little thing up on your own? A. I had asked Agnes Morgan to not create more trouble. She had created trouble in the neighborhood before.

Q. You were back there just before this incident arose too; right, with Agnes? A. No, I was not with Agnes.

Q. I mean once the slapping — did you observe a slapping incident? A. Yes, I did.

Q. Is that when you left your booth. A. I hadn't been in the booth that long.

Q. But you were never struck at any time? A. No, I was not.

Q. Some time after 5:00 you gave a statement; isn't that correct? A. Yes, I did.

Q. Before I go to that, so I understand your testimony at this time, Raymond, just prior to the shots, was located in the area of the juke box; is that right? A. Yes, he was.

Q. Was he on his back? [p. 601] A. Yes, he was.

Q. With his — Where were his legs? A. They were laying east from the front door right by the juke box.

Q. He was just laying on the floor over in that area? A. Right.

Q. This statement, I will ask you if you remember having given one at 6:07 A.M. on March the 1st; ask you if you remember this statement? It would have been at police headquarters and Mr. Hopkins was asking the question:

"Do you know what happened when he left the booth? A. Everything —

Do you remember that question? A. Yes, everything happened so fast but I still knew what was going on.

Q. Your answer. I will read your answer:

"Everything happened so fast, if you want my opinion he was knocked down by the juke box, right up to the front."

Do you remember that answer? A. Yes.

Q. "Did you see who struck him?" "A. No. I am going to tell you, the way it was going so fast."

"Q. Is that your answer."

A. My answer was that either one of the two — It was [p. 602] either one of the two dark headed boys.

Now I can't tell you which one it was."

"Q. After he was struck, you say he was knocked to the floor?" "A. He was."

"But in this period of time you didn't see any tear gas in Mr. Belcher's hand and he was not spraying any tear gas?"

"You don't have to see — no, I didn't see, but I know where it came from because if you have a place closed up, you use a mace in here, you will breathe it."

Q. How long did this incident of stomping — Did you see at any time anybody stomping Mr. Morgan? A. Yes, they both had him down.

Q. They both had who down? A. Kyle Morgan.

Q. Who is they? A. As far as I can be real sure, it was one of the dark headed boys and the blonde headed boy.

Q. This incident was, with the Morgans, supposed to be happening where? A. By the third booth nearer the piano.

Q. By the third booth nearer the piano; isn't that correct? A. Right.

Q. It was probably really between the booth and the

piano? [p. 603] A. No, no, no. It was past the first booth.

Q. Now you got me confused. Where did the Morgan incident that you say there was two people on him transpire at? A. Where the piano set. We didn't have booths back on this side. I mean your diagram is blowed up so big to where Jimmie's Cafe was. You take it —

Q. This booth, this booth, or this booth (indicating)? A. There was only three booths there.

Q. This is — A. Take the third booth.

Q. This one (indicating)? A. No.

Q. The one towards the front door. A. The middle one then. What I count from the piano.

The Court: Mrs. Compston, you just step down and take the pointer and point out which one you mean and let the witness hold the pointer.

A. This is your piano. This is where you come in the entrance (indicating all). You got this — This is the first booth from the piano. This is your second booth, and I will say right in there.

The Court: Take your seat again, Mrs. Compston.

Q. (By Mr. Taylor) How much time elapsed between when you seen Mr. Belcher struck and he was on the floor over there and the gun was discharged? [p. 604] A. It would be a matter of seconds. I said minutes before but things like this don't happen, because I mean it is like you have an automobile accident; it only happens in a matter of seconds.

Q. Then the next question that I wanted: "Did you see anybody kick at him or strike him after he was on the floor?" A. Yes.

Q. Did you remember your answer at that time? A. Yes.

Q. What was it? A. The two dark headed boys.

Q. I will read you this answer and ask you if you remember—

The Court: Come up here.

(Discussion off the record followed.)

Q. (By Mr. Taylor) We will read this answer to you and ask you if you don't remember having given this answer on the morning to Sergeant Hopkins:

"Q. Did you see anybody kick at him or strike him after he was on the floor. A. I can't be honest with you, yes. Everything was going chairs was going and people was stomping. I suppose to say yes but, no, but I mean—

Q. Did it happen that quickly? A. It didn't happen that quickly but I want to ask you [p. 605] a question.

The Court: No. You don't ask questions. The counsel asks questions. A. Okay. I will answer a question.

The Court: Just a minute. Is there a question on the record?

Mr. Taylor: Yes, sir.

The Court: All right. Ask your next question.

Mr. Taylor: We have concluded then with that.

The Court: You have concluded?

Mr. Taylor: Yes, sir.

The Court: Do you have any questions, Mr. McGrath?

Mr. McGrath: We have no questions.

The Court: You are excused, Mrs. Compston.

Call your next witness.

Mr. McGrath: Mr. Compston.

* * * * *

Civil Action No. 72-67

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

Eastern Division
(Title omitted in printing)

TESTIMONY OF JAMES COMPSTON
JAMES COMPSTON

called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. McGrath:

Q. Would you state your name, please, sir. A. James Compston.

[p. 606]

Q. What's your address, Mr. Compston? A. 402 West Third.

Q. Are you married? A. Yes.

Q. To Frances Compston? A. Yes.

Q. The woman who just testified here? A. Yes.

Q. Before you? A. Yes.

Q. Has your wife been ill lately? A. Huh?

Q. Has your wife been sick lately? A. Yes, she has.

Q. Quite sick? A. Yes, quite serious.

Q. Are you familiar with Jimmie's Cafe, Mr. Compston? A. Yes.

Q. Were you there on March 1, 1971? A. Yes.

Q. What was your purpose in being there? Why did you go there? A. To walk over there to get my wife to walk her home.

Q. Your wife worked there. A. Yes, she did. [p. 607]

Q. Do you remember approximately what time you arrived? A. Approximately —

Q. Do you remember what time your wife got off work? A. Approximately about 1:30.

Q. Was Raymond Belcher there that night? A. Yes.

Q. Was he there with a young girl? A. Yes.

Q. Were you sitting with him that night? A. Yes, I was.

Q. Mr. Compston, can you see this exhibit, this diagram? A. Yes.

The Court: Why don't you let the witness take the pointer.

Q. (By Mr. McGrath) I want you to look at that diagram, Mr. Compston, and after you do, will you tell me whether or not that is a fair representation of how Jimmie's Bar is laid out; how it looks? A. Yes.

Q. Can you read the various things in there as they are written; the bar, the piano, the bowling machine? A. That's the bowling machine. (Indicating.)

Q. The juke box? A. The juke box is over here (indicating all,) the table [p. 608] here and the phone right here (indicating).

Q. That fairly looks like Jimmie's Bar? A. Yes.

Q. Where were you seated? A. Right here (indicating).

Q. Were Agnes and Kyle Morgan there that night? A. Yes, they were.

Q. Did anything unusual happen that night? A. Well, she slapped the blonde headed boy's face.

Q. Where was that? A. This was right in here (indicating).

The Court: Mr. McGrath, are you going to ask him some more questions about that?

Mr. McGrath: Yes.

The Court: Mr. Compston, just step down in the

same place you were before and just come around this way so you are not between the jurors and the chair, and Mr. McGrath will ask you questions, and if it is necessary to point to the chart, you point to the chart.

A. Sitting here (indicating) and the blonde headed one walked over to Agnes and said something to her and she slapped him. Then he shoved her back. She landed back here (indicating) at the piano and then slid down through the floor.

Well, Mr. Morgan jumped up and grabbed the blonde headed one and they landed over on the floor about in here [p. 609] (indicating.)

Q. What happened then with Mr. Morgan and the blonde headed boy? A. Huh?

Q. What happened next with Mr. Morgan and the blonde headed boy? A. He was on the floor and the blonde headed one was stomping at him, and then Belcher, he got up, and one of the two black headed ones grabbed him and they all went over in between the tables and the juke box.

Q. What happened over there, Mr. Compston? A. They was stomping him.

Q. Mr. Belcher was on the floor? A. Yes.

Q. The two boys were over him? A. Yes.

Q. What do you mean when you say stomping? A. Like you take your foot and stomping against the floor towards his head.

Q. Were they striking him, hitting him, with their feet? A. With the feet.

Q. Was there any tear gas in the bar that night, Mr. Compston? A. Yes, there was.

Q. When did you first notice the tear gas? [p. 610] A. When it started burning my eyes.

Q. What was going on when your eyes started burning? A. Then after that, I heard some shots.

Q. How many shots did you hear? A. Three.

Q. Do you know where the shots came from; where were they fired from? A. Just between the table and the juke box where Belcher was laying on his back.

Q. Where were the two dark haired boys when the shots were fired. A. One of them landed his head towards the bar and the other one's head about between the first and the second booth laying slantwise.

Q. When the shots were fired, they were over by Officer Belcher? A. Yes, they was.

Q. What were they doing? A. Huh?

Q. What were they doing then just before the shots were fired? A. They was still bouncing Belcher around. He come up off of there shooting.

Q. Where were you when this was going on? A. I was in the middle booth. [p. 611]

Mr. McGrath: I have no further questions, Your Honor.

The Court: You may cross-examine, Mr. Lewis.

Cross-Examination

By Mr. Lewis:

Q. Mr. Compston, what direction were you facing as you were sitting in the booth. A. Facing towards the bar.

Q. Would that be east or west; do you know? A. I was on the north side of the room, facing south.

Q. But the seats face each other, east and west; don't they? A. Oh, I was facing east when I was sitting in the booth.

Q. Bonnie Lohmann was sitting opposite you? A. Yes.

Q. So, she was facing west? A. Yes.

Q. How high are the backs of those booths up there; were they — at that time? A. That I don't know.

Q. Did they come up about to your shoulders? A. Yes.

Q. Did you hear—when this incident erupted, where was your wife? A. Like I said, the blonde headed one and the woman got [p. 612] into it; Belcher —

Q. That's not my question. I will ask it again.

Mr. Compston, when this incident started, where was your wife located, was she in the booth? A. She set there for a few seconds and then she walked over and told Agnes to calm down because we didn't want no trouble in the bar.

Q. Was that after Agnes had slapped the boy? A. Yes.

Q. You didn't see your wife slapped or anything? A. No, my wife didn't.

Q. What happened next after your wife spoke to Agnes? A. After she spoke to her, she was on the east side of the piano.

Q. Your wife was on the east side of the piano? A. Yes, she was going back to get stuff ready for the next morning.

Q. Was there a coffee machine in this place? A. Yes.

Q. Would you take the pointer and locate approximately the area of the coffee machine? A. Right in this district here (indicating).

Q. Would it be correct to say that your wife was back at the coffee machine? A. No, she was standing here and she started to walk back [p. 613] to here when she heard the fireworks going off.

Q. You are indicating that she had started to walk back toward the coffee machine; is that correct? A. Yes.

Q. How far was — Was she close to the entrance between the two, the division between the two bars

that are shown there? A. She was standing right in here (indicating).

Q. Right between the piano and the bowling machine; is that it? A. The piano and the bowling machine, between them.

Q. Do you have an estimation of how far that was from where you were sitting? A. No, I don't.

Q. But at that point in time she had started back toward the coffee machine; is that correct A. Yes.

Q. Did you hear Ray Belcher say anything to Bonnie Lohmann? A. No.

Q. As this incident started? A. No.

Q. Ray was sitting right in the booth with you; wasn't he? A. He was sitting on the outside and I was sitting on [p. 614] the inside.

Q. You didn't hear him tell her to — words to the effect, get the hell out of here? A. No.

Q. Was anybody closer — A. No.

Q. — to them than you were? A. No.

Q. You were facing east prior to this time. Where were the boys that were involved in this thing located? A. The three booths on the end.

Q. Mr. Compston, would you point, prior to this incident starting up, where the boys had been sitting? A. You want me to point it out?

Q. Would you take the pointer and show just where you think they were. A. (Indicating.)

Q. You were facing — A. Towards the piano.

Q. Were you facing in the general direction they were? A. Yea.

Q. Where you could see them; is that correct? A. I seen the three boys, yes.

Q. Did you hear them say anything about Ray Belcher or anything about him being a cop? [p. 615] A. I didn't hear them say a thing.

Q. Just before this incident erupted, Bonnie Lohmann sitting in a booth facing the front door; wasn't she? A. Yes.

Q. Do you remember seeing her after the shooting occasion? A. No.

Q. When did you next remember seeing Ray Belcher, if did, after the shooting? A. After the shooting he got up off the floor and what I don't know, the blonde headed one was dragging him out, or he was trying to hold him from going out the door.

Q. What did you see the blonde headed boy do in this incident? A. I seen him shove Mrs. Morgan back towards the piano after she slapped his face.

Q. What did you see him do next? A. Then Mr. Morgan, he jumped up and grabbed him and they went over towards the booth and Morgan was on the floor and he was stomping towards his head.

Q. Do you know whether he hit Morgan's head? A. No.

Q. At that time was Noe facing east? A. Yes, he was facing east.

Q. What did you see next? A. I seen the two black headed ones had Belcher over [p. 616] between the piano and the table and they was going at it pretty good and he come up, come up firing.

Q. Over between the piano and the table? A. I mean the juke box and the table.

Q. Did you see Noe around Belcher at that time, the blonde headed boy. A. He started towards the door.

Q. He had started towards the door?

The Court: That is the blonde headed boy started toward the door? A. Yes, the blonde headed one.

The Court: Is that after Belcher fired two shots?

A. Yes.

The Court: Go ahead.

Q. (By Mr. Lewis) Mr. Compston, what was your employment at that time? A. What was my employee?

Q. Employment. A. I was working for Ross-Willoughby.

Q. What time did you go to work? What was your regular working hours. A. It is 8:00 to 6:00 at that time.

Q. Starting at 8:00 A.M. in the morning? A. Yes.

[p. 617]

Q. You had come in, I believe you said, shortly before this happened to walk your wife home? A. Yes, because she was scared at that time after a colored person pistol-whipped her.

Q. Do you remember anybody talking to you at Jimmie's Cafe after the incident? A. No.

Q. What do you next remember after the incident?

A. Well, I seen Belcher come in and make a phone call.

Q. Did you see anything about any money being put into the phone? A. My wife had the money in the phone, was gonna dial, and then Belcher called downtown.

Q. Did he come back in from the outside? A. Huh?

Q. Did he come back in from the outside? A. Yes.

Q. What did you see after that next, after that phone call that you remember? A. The policemen was all over that place.

Q. How many would you estimate came in? A. Well, off hand I can't tell you.

Q. Can you estimate how many? A. It was approximately four cruisers and two paddy-wagons. [p. 618]

Q. Do you remember seeing Mr. Stengel lying on the floor? A. Stengel; one of the blackheaded boys was laying on the floor and the other black headed boy was laying on the floor.

Q. Do you remember how long they were there on the floor?

The Court: Mr. Lewis, I am going to take a recess of 15 minutes at this time. You may leave the stand during the recess, Mr. Compston, but don't speak to anybody. Don't talk to anybody.

The Witness: What's that?

The Court: We are going to take a recess now for 15 minutes. You may leave the witness standing during this recess but don't talk to anybody about this case during the recess.

Ladies and gentlemen of the jury, please remember what I told you earlier: Don't talk about this case when you are in recess.

Don't form or express an opinion about the case.

The clerk will recess the Court for 15 minutes.

(Recess taken.)

Q. (By Mr. Lewis) I believe you said that you didn't talk to anybody at the cafe after the incident at all? A. I didn't talk to nobody after the shooting.

Q. Where did you go after the shooting? A. I went back at the restroom of the bar. [p. 619]

The Court: Ask him the direct question.

Q. They take you down to the city police station? A. Yes.

Q. Who was with you? Were you with somebody? A. They took my wife down in the cruiser.

Q. With you? A. Yes.

Q. Did you give a statement down there? A. Yes.

Q. Do you remember how long you waited to give this statement? A. Well, we didn't get out of there until 6:00 o'clock in the morning.

Q. Did you give your statement just before you got out of there? A. I gave my statement down to the

police station; then they turned us loose about 6:00 o'clock in the morning.

Q. Was that a short statement?

The Court: Come up here, gentlemen.

(Thereupon followed a discussion off the record.)

Q. (By Mr. Lewis) On that morning do you remember this question being asked you and this answer being given:

"Q. Did you see anyone kick Ray with their feet or stomp on him? A. No, I didn't." [p. 620]

Do you remember that? A. No, I don't.

Q. You don't remember that question and that answer? A. No, I don't.

Mr. Lewis: That's all.

The Court: Are you through with this cross-examination?

Mr. Lewis: Yes, Your Honor.

The Court: Do you have any other questions, Mr. McGrath, of this witness?

Mr. McGrath: I have no questions, Your Honor.

The Court: Mr. Compston, your testimony is completed now. You may leave the witness stand.

The Witness: Can I leave?

The Court: You can leave the courthouse now, yes. Call the next witness.

Mr. Crawford: Agnes Morgan.

Civil Action No. 72-67

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

Eastern Division

(Title omitted in printing)

TESTIMONY OF AGNES MORGAN
AGNES MORGAN

called as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Crawford:

Q. Mrs. Morgan, you presently live in Columbus; is that [p. 621] correct? A. Right.

The Court: You are Agnes Morgan?

A. Yes, sir.

Q. (By Mr. Crawford) If you can recall back to February 28th of 1971, and also the early morning hours of March 1, 1971, do you recall where you were?

A. Yes.

Q. Where were you? A. Jimmie's Cafe on Summit.

Q. Do you recall what time you arrived there? A. It was around 3:00, 4:00 something around that time. I am not positive.

Q. Who were you with? A. Kyle, my husband.

Q. During the course of your time at Jimmie's Cafe, can you recall briefly what you were doing? A. We drank beer and eat and played the bowling machine. We knew most everybody down there.

Q. Had you been drinking quite a bit that day? A. Well, not exceptional but what I mean that length of time it would be quite a bit.

Q. About 1:30 in the morning and this would be on March 1, 1971, do you recall any incident in there with respect to any of the patrons and yourself? [p. 621] A. Yes.

Q. Could you relate to the jury what that incident was. A. We started with Mike and Casey.

Q. What? A. Michael Noe and Mike and Casey —

The Court: Just a minute, Mrs. Morgan. (Thereupon followed an admonition to witness to keep voice up.) A. When the three boys came in, Bob and Casey and Mike, we started playing the bowling machine. We had been playing off and on, different ones of us, before, but we played with them a couple games and an argument started.

Q. Who did the argument start with? A. Between Mike and I.

Q. Do you recall why the argument was started. A. Over we were playing for a drink and over the game, both combined.

Q. What happened then? A. He just started calling me names and yelling at me.

Q. What did you do? A. I asked him to stop and he said just because I lost now you want a drink instead of a beer, and I said, well, I will pay the difference, you know, just give me the 40 cents and I will pay the difference, and he just kept on and I just back handed him like that (indicating.)

Q. You slapped at him; right. [p. 623] A. Yes.

Q. What did he do after that happened? A. He hit me.

Q. Then where did you go? A. He just slapped me and when he slapped me, of course he was standing in between me and Kyle standing on my right, and I did like this (indicating), and when he slapped me, I just went over and it knocked me out and that's it.

Q. Do you think you were unconscious at that time?

A. I don't know anything. I didn't hear anything else.

Q. What's the next thing you do remember? A. Kyle and a policeman getting me up off the floor.

Mr. Crawford: I have no further questions, Your Honor.

The Court: You may cross-examine.

Mr. Lewis: We have no cross-examination.

The Court: That completes your testimony, Mrs. Morgan. You may leave the witness stand.

Call your next witness, Mr. Hughes.

Mr. Crawford: Kyle Morgan.

Civil Action No. 72-67

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

Eastern Division
(Title omitted in printing)

TESTIMONY OF KYLE MORGAN

[p. 624]

KYLE MORGAN

carried as a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Crawford:

Q. Would you please state your name. A. Kyle Morgan.

Q. You presently reside in Columbus? A. Yes.

Q. Taking your thoughts back to March 1st and February 28th of 1971, do you recall where you were? A. As far as I know, I was in Jimmie's Cafe.

Q. Do you remember what time you got to Jimmie's Cafe? A. In the early afternoon.

Q. Who were you with? A. Agnes Morgan, my wife.

Q. She is your wife; right? A. Yes.

Q. About 1:00 o'clock or 1:30 do you recall any incident that took place in Jimmie's Cafe that involved you? A. I don't recall of an incident. I don't recall waking up or coming to my senses on the floor.

Q. Can you recall anything before that period of time? A. No.

Q. Had you been drinking that day? [p. 625] A. Yes, I had.

Q. Would you consider that you were drinking a lot? A. Quite a bit.

Q. What is the thing that you do recall about that evening? A. At the time that I came to my senses on the floor, I was being kicked by a couple of individuals — at least there was more than one — I was being kicked in front and back.

Q. Do you know where you were when you were being kicked? A. You mean location within the bar?

Q. Yes. A. It was between the piano and the end of the bar, somewhere in that area.

Q. When you say you were being kicked, do you recall how you were being kicked? A. Yes, I was kicked like in the leg here (indicating) and the chest and the back and the back of the head.

Q. Did you have any bruises the next day? A. Yes, I did.

Q. You pointed to your thigh. Where else did you say you had bruises? A. Practically from here (indicating) to the toe to my head.

Q. Did you have any bruises in the groin area? A. Yes. [p. 626]

Q. Do you recall anything else about that night? A. I blacked back out some time during this kicking and I blacked out again and then I guess — I don't know how long afterward, but anyway a uniformed policeman was helping me up off the floor.

Q. So, you do remember that you were on the floor when you were being kicked; is that correct? A. Yes, that's correct.

Q. You were being kicked by two persons you said? A. More than one. I couldn't say two or three or more; more than one.

Mr. Crawford: Thank you. I have no further questions, Your Honor.

The Court: Mr. Lewis.

Mr. Lewis: Could we have just a moment, Your Honor?

The Court: Yes.

(Thereupon followed a discussion at plaintiffs counsel table.)

Cross-Examination

By Mr. Lewis:

Q. Did you see some policemen come into the cafe after that? A. I didn't see them come in. Like I said, one was [p. 627] helping me, assisting me up from the floor is the first that I recall.

Q. Did they take you to any hospital for any emergency treatment? A. No, sir.

Q. Where did they take you, if they did? A. I assume it was to the police station where they took our statements.

Q. How long after they took you down there was your statement taken; do you remember? A. I don't know the exact time. I was there until approximately 7:00 o'clock in the morning and it was taken during that time.

Q. Did you receive any medical attention there at any time? A. No, sir.

Q. Did you have any major visible marks about your person at that time, your face or anything like that? A. At that particular time I really don't — didn't notice. The following day I noticed it. I was sore in spots and I noticed I had bruises.

Q. Did you give a statement down at the police station before you left at 7:00 o'clock? A. Yes, sir, I did.

Q. I will ask you if you remember this question and this [p. 628] answer being given at that time:

"Q. Were there more than one person there that you had an altercation with? A. No, not with me."

Do you remember giving that statement at that time? A. No, I don't recall it.

Mr. Lewis: That's all the questions.

Mr. Crawford: Nothing further, Your Honor.

The Court: Your testimony is completed, Mr. Morgan. You may leave the witness stand.

Civil Action No. 72-67

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

Eastern Division
(Title omitted in printing)

TESTIMONY OF RAYMOND BELCHER

[p. 638]

Friday, Morning Session,
June 14, 1974

RAYMOND BELCHER

called on his own behalf, having been first duly sworn, testified as follows: [p. 639]

Direct Examination

By Mr. Hughes:

Q. Would you please state your name. A. My name is Raymond L. Belcher.

Q. What is your occupation? A. I am a police officer of the Columbus Police Department.

Q. How long have you been so employed? A. Fourteen years the 16th of December this year.

Q. You were a police officer on March 1, 1971? A. Yes, sir.

Q. Officer Belcher, I believe that you have been in the Court during the entire case with a few minor exceptions; is that correct? A. That's correct.

Q. Officer Belcher, on March 1, 1971, as you were laying on the floor at Jimmie's Cafe, having passed out due to a beating, having received a further stomping, what thought was in your mind?

(Mr. Taylor arising.)

The Court: Just a minute. Come up here.

(Thereupon followed a discussion off the record.)

The Court: Do you wish to strike the last question Mr. Hughes?

Mr. Hughes: I will strike the last question, Your Honor. [p. 640]

Q. (By Mr. Hughes) Officer Belcher, would you state what arrangements you had for Sunday evening, February 28th and the early morning of March 1st? A. On that date, February 28th, I had made arrangements to meet Miss Lohmann who lived at 54 West Second Avenue, and Officer Hawk, both my friends at Jimmie's Cafe some time after midnight.

Q. What did you do in furtherance of that plan? A. Some time after midnight I drove from my home to Miss Lohmann's apartment, picked her up and drove directly to Jimmie's Cafe.

Q. Approximately what time did you arrive at Jimmie's Cafe? A. We arrived there about 1:15 or 1:20 A.M.

Q. What happened or what did you observe as you went into the cafe? A. As we entered the bar, I observed, looking around, I observed probably ten or 11 people inside the bar. Seated at the bar there were three young men; I believe one of them had a full beard, long dark hair, wearing blue jeans or dark trousers and combat boots.

One was a man about my size, blonde haired, wearing a white shirt, black pants cut off about four inches above the ankle and wearing what I call Cuban style shoes. They have the large heel on them. [p. 641]

The third man at the bar was a man about 22 years old, large man. I believe he was wearing what is known as Army combat boots.

Further down the bar from him was seated a man about, male, white subject, about 45 years old, and I believe that where the bar is separated, the bar itself is in two sections; right where the bar is separated there was an older man who got up and left within just a moment or two after I entered the bar.

There was also an older lady there who I came to know as Agnes Morgan. There was a lady behind the bar. Her name was Marie, I believe that she is just a cleanup lady, and she was behind the bar.

There was James Compston and his wife Frances also inside the bar. I believe James Compston was seated in the second booth as you enter the front of the bar.

Q. Did the three gentlemen that you first described ever become known to you by name? A. Yes, they did.

Q. Who were the three people? A. The blonde haired man generally about my size was known to me as, later became known to me as Michael Noe. The biggest young man in the place became known to me as Robert Ruff, and the other gentleman was Casey Stengel.

Q. Did you know any of these three gentlemen prior to [p. 642] that incident that evening? A. I don't recall ever seeing them in my entire life.

Q. Were you acquainted with any of the other persons in the bar? A. Yes, I was.

Q. Who were they? A. Mr. and Mrs. Compston.

Q. What was your relationship with Mr. and Mrs. Compston? A. I was aware that Mrs. Compston's son works for the Clerk of Courts and that I knew her as the manager of the bar.

Q. You did not have a social relationship or anything like that with the Compstons? A. No.

Q. Did you know the Morgans? A. No.

Q. Had you met the Morgans to the best of your ability prior to this time? A. No, sir.

Q. Was there anybody in your company as you went in the bar? A. Yes, Miss Lohmann was in my company.

Q. Would you describe; would it be fair to describe Miss Lohmann as a girlfriend at this time? A. Yes.

Q. As you entered the bar with Miss Lohmann, was Officer [p. 643] Hawk with you? A. No, sir.

Q. I believe your testimony previously was that you were to meet him. At any time did you meet Officer Hawk at that bar? A. No, sir, not that night.

Q. Yes, limiting it to that night. A. No, sir.

Q. As you went into the bar, what occurred? A. As we entered this bar, I did stop at the door and make a point to observe the activity that was going on inside the bar before we actually seated ourselves.

Q. Why did you do that? A. Due to my past experience as a police officer.

Q. Could you just briefly detail what that past experience was? A. Yes, sir. I have worked as a police officer; I have worked every cruiser assignment in the City of Columbus, plus I have driven every ambulance cruiser, worked the radio room, the detective bureau, worked the information desk, and I walked the beat on High Street, or I was walking the beat on High Street at this time and had been for the past four and one-quarter years.

Q. In walking a beat on High Street, where did you walk from to what was the limits or the parameter of your beat? [p. 644] A. Sir, this district is known as the Short North area, that is known among the police officers as the toughest walking district in the City of Columbus or Franklin County.

Q. What are the geographical limits of this beat?

A. The area runs both sides of High Street, Union Station or Goodale Street north to King Avenue or Fifth Avenue.

Q. Are there any bars in this area? A. Yes, sir. At that time I visited in my tour on that street probably 30 bars every evening.

Q. In walking the High Street — Strike that.

Approximately how many walking posts are there in the evening in the City of Columbus?

The Court: I don't understand, Mr. Hughes. Walking posts did you say? Do you mean foot patrolmen; is that what you mean?

Mr. Hughes: Yes. A. I believe at that time there were only three walking districts in the city, or four.

Q. (By Mr. Hughes) A minimum? A. Yes, sir.

The Court: Did you say districts? A. Yes, they are known as districts, sir.

The Court: How many patrolmen would be in each district? A. We walk in pairs.

[p. 645]

Q. (By Mr. Hughes) So, on a typical evening in the City of Columbus, there would be either six or eight walking patrolmen? A. That's correct.

Q. You were one of these walking patrolmen? A. Yes, sir.

Q. Once you had, for want of a better term, made a sizeup of the bar when you entered, what did you do next? A. After I observed the people inside the bar and the atmosphere of the bar, I walked over and spoke to Mr. and Mrs. Compston and we — Miss Lohmann sat in the booth beside Mrs. Compston; I sat down beside James, and I deliberately placed Miss Lohmann facing me. I placed myself so that I could observe everyone in the bar.

Q. Officer Belcher, were you on or off duty at this time? A. Sir, I was off duty.

Q. When was the last time you had been on duty with the Columbus Police Department prior to this incident? A. I had worked Saturday night, the previous night, and had gone off duty at 4:00 A.M. in the morning.

Q. So, it had been 4:00 A.M. Sunday morning? A. Yes, sir.

Q. In order to complete the record, when would you normally next have gone to work? A. My next tour of duty would begin on Tuesday evening at 8:00 P.M.

[p. 646]

Q. So, you were off duty from 4:00 A.M. on Sunday morning until 8:00 P.M. the ensuing Tuesday; is that correct? A. Yes, sir.

Q. Your days off would have been Sunday and Monday at that time? A. Yes, sir.

Q. Officer Belcher, after you had joined the Compstons, had sat down, what next occurred in the bar? A. Drinks were ordered and brought to the table. I believe Mrs. Compston delivered a drink for both Miss Lohmann and myself. I think she had a bottle of beer and I ordered a highball or a whiskey and 7-Up.

Q. Then what happened? A. We sat in the booth and was discussing Mrs. Compston's health. I believe she stated to us that she had recently broken a leg on the ice and had only taken the cast off her leg a couple of days previous, and we were talking about that.

Q. Then what happened? A. The young blonde haired man that I know now as Mike Noe approached the table and asked if any one at the table had any change, any dimes for the bowling machine, and I replied that he was welcome to any change on the table there that he could find that would suit him.

Q. Then what happened? A. We had no change, no dimes on the table, and he turned [p. 647] and walked back to the bowling machine and proceeded to play a

game with a lady I later became known to me as Agnes Morgan.

Q. Then what happened? A. Some type of an argument broke out between Noe and Agnes. Mike Noe was yelling and screaming at her. He cursed her, using every filthy word that I think I could have heard. This went on for about a minute.

Her husband Kyle Morgan paid no attention to the argument between Agnes and Mike at this point. He merely sat at his seat at the bar, sat on the barstool, did not turn around or pay any attention to the argument at that point.

After this continued for about a moment, Frances Compston stated to me that — not to get involved; that she knew the boy, or something to that effect, and that she would settle the argument.

She got up out of the booth and approached Mike Noe who was still arguing with Agnes. She tried to calm the people down, but it had no effect on them.

Suddenly, or Mr. Noe continued to curse Agnes. She did slap his face and she was immediately knocked to the floor by Mike Noe.

All this time Mr. Morgan paid no attention to the argument. I don't know whether he was used to this sort of thing or not, but — and I made no effort to get involved up until that time. [p. 648]

Agnes was knocked to the floor; Kyle Morgan then did get up. I assume it was to get up to defend his wife from Mike Noe. Kyle stood up from the stool, turned around to go towards Noe; the man I knew as Mr. Ruff immediately stood up and knocked Kyle Morgan to the floor with a blow from his fist.

Both men then began to beat and stomp on Mr. Morgan. This took place right between the bar and the

bowling machine. Agnes Morgan was on the floor screaming. Kyle Morgan, who was I believe too intoxicated to even defend himself, was being beaten and stomped by two men.

At that point I realized that I could not let this scene continue any longer and I made up my mind that I was absolutely one way or the other going to arrest all three men — correction, at least two of these men.

Mr. Stengel at this point hadn't gotten involved in anything at all. He had done nothing whatsoever and had left his seat at the bar and was standing by the juke box by the front door.

Mr. Ruff, after about a moment or a minute of kicking and pounding on Kyle Morgan, stepped away from him and stood or half stood at a barstool observing me.

As I looked over my right shoulder to the front door of the bar, I saw Casey Stengel standing by the juke box as if he had some change in his hand and was going to select a song on the juke box, or play the thing, but Casey was looking [p. 649] towards me.

Robert Ruff was observing me and Mike Noe was still kicking on Mr. Morgan.

He was standing by the end of the booth there by the piano in the bar, holding on to something on the side of the bar or the booth. I don't know whether it was a booth itself or a coat rack, but he was viciously and with a great deal of violence and force kicking Kyle Morgan about the head and the face.

I told Miss Bonnie Lohmann that — and I don't know whether she actually heard me or not — but I did tell her that I was going to call the police and if trouble started to run and get out of there.

Miss Lohmann is not the — The reason I informed her of this, she is in a very, really poor physical health.

She has a plate in her right arm. She has an iron rod in her hip.

The Court: Do you object to this?

Mr. Taylor: Yes, sir.

The Court: I will sustain your objection. You can delete that.

Q. (By Mr. Hughes) Don't talk about Bonnie's health. Go on with the story. A. I told Bonnie that if a fight started, to run; that I was going to call the police.

[p. 650]

I took my tear gas cannister from my pocket, put it in my hand, and in half-croached positions, slid out of the booth. My attention at that time was to walk directly to the front door of Jimmie's Cafe, go through the door, outside, go out onto the sidewalk and use the phone booth which is located just about 20 feet from the front door of that bar.

My intention was not to call the police from inside. I felt at that time that I would never be allowed to make that call. As I stood up from the booth, Mr. Stengel ran from the juke box, he jumped right on my back, locked his arm around my neck and I was nearly thrown to the floor.

I believe I had reached a standing position. I twisted my face around to Mr. Stengel and I said, Let go of me."

Mr. Stengel began throwing punches, attempting to strike me with his fist, and attempted to throw me to the floor. I grabbed ahold of the side of the booth and again told him to let go of me.

Mr. Ruff ran across the floor at that point and I was fighting both men. I was tripped or thrown on top of a small table there by the front of the bar itself, I think they are known as cabaret or cafe tables, they are very small tables, maybe two feet square.

My back went over this table. My head struck the juke box, and I recall being kicked for a moment after that. I was [p. 651] kicked several times and then there was a moment of darkness where I could neither feel nor hear anything. I don't know whether I was unconscious or apparently I was, but how long I was unconscious I have no idea. It could have been ten seconds; it could have been ten minutes.

As I looked up from the floor with my legs up over a table, I could see nothing but feet and fists. I was being kicked in the face and the head by at least two men.

At that time I tried to get up off the floor. I literally tried to pull myself up off the floor by using the men's clothing that were on top of me. I at one point had a man's belt in my hand and tried to drag myself up off the floor by his belt buckle, so I could get up off the floor and defend myself.

I was kicked first one direction, then the other direction. I continued to try to get up off the floor. I was getting tired. I was beginning to lose.

At that time somewhere in this struggle my tear gas was kicked out of my hand. I had been spraying it, trying to spray directly into these men's faces from the floor but somewhere during the fight the tear gas was stomped from my hand.

As I began to realize that I wasn't gonna be able to get myself off the floor, I reached for the pistol that I carried in my waistband in my pants. At that time I was carrying a .32 Browning automatic, and the gun was not there. [p. 652]

I was still being kicked and stomped. I put my arms, my left arm over my face to shield my face from these kicks, and looked across the shiny barroom floor to see if the pistol was lying there some place.

The gun was not there. The thought went through

my mind, oh, God, if these men, whoever they are, find that gun on the floor, they will kill me with my own weapon.

I felt the pistol underneath my back, still being kicked and stomped. I brought the weapon around in my right hand and shoved backwards to get these men off of me and I fired three shots straight into the ceiling, or straight into the mass of bodies that were on top of me.

Two men fell to the floor, one man, the young man I know as Mike Noe, ran out the door. I got onto my feet and chased Mr. Noe outside. I did catch up with him. We struggled. Mr. Noe was struggling violently with me as if to escape. I struck Mr. Noe with the pistol across the face.

This struggle took place on the sidewalk in front of the bar directly in front of the large front window of Jimmie's Cafe. As I struck Mr. Noe, I was facing the front of the bar and the gun went off I believe as it struck his forehead or as my arm came forward. I still couldn't say when it happened.

As the gun went off, I heard a lady scream inside. She was screaming, my God, my God, I have been hit. I have been [p. 653] hit.

I believed at that moment that the bullet had gone through the window and I had shot or maybe killed somebody inside. I didn't know who. I only knew it was a woman screaming.

Mr. Noe was still hanging on to me and I twisted him around and he collapsed onto the sidewalk.

Q. Officer Belcher, you have testified without my asking you any questions for what I would estimate probably ten minutes and have told a rather lengthy story, have you had occasions in the past from the witness stand to have told this story before. A. I believe so.

Q. Just detail for the jury how many times you have done so? A. I believe this is the fourth time that I have been to Court on this, sir.

Q. In addition to the times that you have been to Court and told this story, were you asked to tell this story by other persons on other occasions? A. Yes, sir, I believe I gave at least two statements to the police department, the detective bureau.

Q. Did you have occasions to tell each of defense counsel the story on more than one occasion?

The Court: Do you understand the question? A. Yes, I do. I don't believe that I have ever actually [p. 654] stated to any of counsel the story.

Q. (By Mr. Hughes) Officer Belcher, I am going to go back and cover a couple points in the story as you have told it. Do you have recollection of when you first began firing your tear gas mace? A. Yes, sir, I do.

Q. When was that? A. As I stood up from the bar, I had the cannister in my hand and the gas began spraying actually before I intended it to. The cannister was faulty. I don't know what was wrong with it, but it went off in my hand as I stood up.

Q. How is it supposed to operate? A. At that time we were issued a tear gas cannister which is available at different places in the city. You can buy it; private citizens own this cannister. It appears to be an aerosol type can and it has a button on top which if depressed allows the gas to escape.

Q. You say this was faulty. What happened? A. The gas was ejected from the cannister in a dust form.

Q. How should it have been ejected? A. It should have been ejected from the cannister as a stream of liquid, much as a water pistol would do.

Q. You say it did eject in a dust form. Can you be a little more specific or a little more descriptive of that?

[p. 655] Q. It was as if someone had thrown a handful of talcum powder through the air.

Q. Officer Belcher, from the time you were on the floor until the time you fired the shots, with the exception of that time that you were blacked out, approximately how long were you on the floor? A. I don't know.

Q. Can you give us any estimation? A. I would say that I was on the floor at least a minute being stomped.

Q. Officer Belcher, I hand you what has been marked for purposes of identification as Joint Exhibit 72 C and D which are photographs according to the notation that were taken on 3-1-71 at 6:30 A.M. I would ask you if you can identify those two exhibits? A. Yes, sir, I can.

Q. Do those photographs fairly and accurately represent your physical condition on March 1, 1971 at 6:00 A.M. in the morning? A. Yes, sir.

Q. Officer Belcher, I hand you what has been marked for purposes of identification as Joint Exhibit 71 and I would ask you if you can identify the signature that appears in the upper right-hand corner? A. Yes, sir, I can. [p. 656]

Q. Whose signature is that? A. That's my own.

Q. Where was this form prepared, to the best of your knowledge? A. Grant Hospital.

Q. In it it contains medical information concerning you; is that correct? A. Yes, sir.

Q. Would you read those portions of the form containing medical information about you and state whether that is what you told the person that prepared this form? Don't read the information.

Mr. Taylor: I will object, Your Honor.

The Court: Let me see that.

(Perusal of said document by Court.)

(Thereupon followed a discussion off the record.)

Q. (By Mr. Hughes) Don't read it out loud but to yourself. Read those matters concerning your complaints which appear on the form. Don't read it out loud; just read it to yourself. A. (Witness complies.) Yes, sir, I read it.

Q. Does that accurately describe the complaints as you told them to the doctor or nurse that made this form? A. Yes, it does.

Q. Officer, Belcher, would you leave your seat, pick up [p. 657] the pointer and approach the chart which has been marked as a joint exhibit. Would you point out to the ladies and gentlemen of the jury the tables that I think that you refer to as a cafe table, if they appear on the drawing? A. Yes, sir, these are the tables in this corner. It would be the southwest corner of the bar, approximately ten feet from the front door.

Q. Would you point out the juke box that you referred to? A. This is the juke box (indicating.)

Q. Would you point out, as best you can with the pointer, where your head, your back and your legs were in reference to that diagram when you were first thrown to the floor. A. When I was first thrown to the floor, I can recall my body striking the front of this juke box. I next recall my head being jammed into the corner between the juke box and the wall. My legs or part of my legs were up over this table which had been overturned. I was lying on my back facing upward.

Q. Officer Belcher, you can put the pointer down and if you would continue standing where you are, I will hand you what has been admitted into evidence as Joint Exhibit 66 and ask you if you can identify that photograph? A. Yes, sir, I can.

Q. Is that a photograph of the area you have just described? A. Yes, sir, it is. [p. 658]

Q. Would you turn the photograph around so the jury can see it. Hold it on your chest and would you point out in the photograph, say with your lefthand, where approximately your head was, A. My head was directly in this position (indicating) behind this chair and shoved up against the wall.

Q. In the photograph you see broken glass on the front of the juke box. Do you know how that glass was broken? A. I cannot say how it was actually broken.

Q. Officer Belcher, I hand you what has been marked for purposes of identification and I believe admitted as Joint Exhibit 67 and I would ask you if you can identify that photograph? A. Yes, sir, I can.

Q. Would you tell me what that photograph describes; turn it to the jury. Can you point out what that photograph describes? A. This is a similar scene only taken from a further distance, probably 20 feet further away than the original photograph.

Q. Is that a fair and accurate representation of Jimmie's Cafe on the morning of March 1, the morning in question? A. Yes, sir, it is.

Q. Officer Belcher, I hand you what has been admitted as Joint Exhibit 65. I will ask you if you can identify that? A. Yes, I can. [p. 659]

Q. Would you turn it towards the jury and describe what it is. A. This is a picture of the interior of the bar. The picture would be taken approximately 35 or 40 feet from the front door. The picture would be taken in a westerly direction.

Q. Would you, while you are holding that in your hand, just reach over with your finger and show approximately where the photographer would have been standing and which way he would have been looking. A. From the picture taken here, the photographer would have to be facing directly west towards Summit

Street, towards the front entrance of the bar, and it is apparent that he was standing at the end of the first section of the bar.

Q. Officer Belcher, you previously had testified that Mr. Kyle Morgan was lying on the ground and was being stomped by I believe Mr. Noe and that he was holding onto something on the booth. Can you point out in the photograph approximately where Mr. Morgan was lying and approximately what, if you know, Mr. Noe was holding onto at the time he was stomping him? A. Kyle Morgan was lying directly at this location at the end of the piano (indicating.) Michael Noe was either holding onto this coat rack on the end of this first booth from the piano or onto the end of the booth itself.

Mr. Morgan was lying on the floor directly beneath [p. 660] him and was being stomped at that point.

Q. From your observation what did it appear or why did it appear that Mr. — Never mind. Strike that.

I hand you what has been marked for purposes of identification as Joint Exhibit 64, which I believe has been admitted. I would ask you if you can identify that. A. Yes, sir, I can.

Q. Would you turn it towards the jury and describe what it portrays. A. This is a picture taken of the south wall of Jimmie's Cafe. It shows the cafe tables that I was referring to. It shows the very first bar stool as you walk in the door. It would be on your right-hand side. It shows the telephone on the south wall of the bar.

Q. Approximately where would the photographer have been standing on the diagram in order to take that picture, if you would point to it. A. The photographer?

Q. Point to where the photographer would be stand-

ing and which way he would be looking. A. To get this picture, the photographer would have to be standing somewhere about the front door.

Q. And looking back which way? A. He would be looking in a southeasterly direction.

Q. Do each of these four photographs accurately portray [p. 661] the scene in Jimmie's Bar that evening, to the best of your recollection? A. Yes, sir.

Q. You may return to your seat.

Officer Belcher, as you were laying on the floor after you had come to after you had recovered your weapon, as you removed the weapon from behind your back and pointed it upward —

Mr. Taylor: I object to the form even at this stage.

The Court: Your objection is premature.

Q. — what thought was in your mind?

The Court: Just a minute. Do you object to this question?

Mr. Taylor: Yes, sir.

The Court: Come up.

(Thereupon followed a discussion off the record.)

The Court: The objection is overruled. You may answer that question. A. I am sorry. Sir, would you repeat the question?

The Court: Have the reporter read it back.

(Thereupon said question was read back.) A. The thought in my mind at that point was that I was going to be killed on that barroom floor if I did not use the weapon I had, I would be killed. [p. 662]

Mr. Hughes: No further questions, Your Honor.

The Court: You may cross-examine.

Cross-Examination

By Mr. Taylor:

Q. On the evening of the 28th of February, what had you done? Let me start over.

You are married; isn't that correct? A. That's correct, sir.

Q. Is your wife employed? A. Yes, sir, she is.

Q. What did you do about 11:00 o'clock that evening? A. I drove my wife to her place of employment at Western Electric. It is on 5600 East Broad Street.

Q. Then you returned home? A. Yes, sir, I did.

Q. When you returned home — Do you have children? A. Yes, sir, I do.

Q. What were their ages? A. My oldest boy I believe was 14 years old; had a daughter 12, and I had another son about 10½ years old or 11.

Q. Put them to bed? A. No, sir, I did not.

Q. Is that when you called Bonnie? A. I don't recall. [p. 663]

Q. Anyway, you did call Bonnie? A. I don't recall.

Q. There is no question in your mind now that Bonnie Lohmann was your girlfriend at that time; isn't that correct? A. I have not denied that.

Q. Did you give testimony as to what your relationship was in the Common Pleas trial? A. I don't recall.

Q. Do you remember having said you was a social friend and a friend of the family and bestman at the wedding of Bonnie's mother? A. I recall that.

Q. Do you recollect how much you had to drink? A. On what date, sir?

Q. After you arrived at Jimmie's Cafe. A. Yes, sir, I recollect exactly.

Q. Is it your custom to order doubles or singles? A. I usually drink singles.

Q. Did you order a double that night? A. I don't recall.

Q. You haven't reread any of your prior testimony prior to giving your testimony here? A. Yes, I have read it.

Q. You don't remember anything being indicated in there as to the amount of alcohol you may have ordered. [p. 664] A. I know how much I consumed that night, sir.

Q. What did you order, a double, single? A. I don't recall how much was delivered. I believe I ordered a drink.

Q. I believe you stated that you placed yourself in a position in this booth so that you could observe proceedings to the east in the bar; isn't that correct? A. Yes, sir.

Q. I guess implicit within that answer is the recognition that if you had been facing the other direction, you would not be able to observe them; isn't that correct? A. That's true.

Q. I believe Bonnie Lohmann was sitting directly across from you facing you in that bar; isn't that correct? A. That's true.

Q. Could you explain to me how she could observe the incident, the booths are rather high in that place; aren't they?

Mr. Hughes: Your Honor, I would object to the form of the question. He is asking this witness how Bonnie Lohmann observed something. I don't think that's within his knowledge.

The Court: I think the question is how could she in her position. You may answer. A. Yes, sir. She could observe everything in the bar merely by turning her body or her head or her eyes in the [p. 665] direction that she wished to see something.

Q. (By Mr. Taylor) She could sit — She was on the inside of this booth; isn't that correct? A. I believe so.

Q. Turn her head and see somebody stomping somebody down by the piano. A. Yes, she could, I believe.

Q. There is no doubt in your mind that that's where this altercation was taking place between Kyle Morgan and Mr. Noe; isn't that correct? A. Yes, sir.

Q. There never came a point in time when it moved down to where they were fighting at your feet; isn't that correct? A. I don't believe it got that close to us, no, sir.

Q. If mace works correctly, it will spray a distance of 25 to 30 feet; isn't that correct? A. I don't believe the mace that we were issued at that time would reach that far.

Q. Do you remember inquiry having been made of you by the prosecutor in the other trial as to the distance that mace would or would not travel? A. By the prosecutor in which trial, sir?

Q. Mr. Sallenby, Common Pleas Court. A. I don't recall the testimony made there.

Q. From the booth where you were sitting, how far in [p. 666] feet was it to the piano where this dispute was taking place? A. It would be, judging by the width of the booth and the space between the piano, I would say nine feet.

Q. I believe you testified now that there is no question but when you got up from that booth, you was going outside to make a phone call. A. My intent was to leave that bar by the front door to go directly to the phone booth outside and call the police.

Q. It is your testimony to the ladies and gentlemen of this jury you did not intend to spray Michael Noe with any mace at that time? A. That's correct.

Q. You did not intend to arrest him at that time? A. No, I did not, sir.

Q. I ask you if you will remember the testimony you gave at the preliminary hearing before Judge Golden on this affidavit as it related to your intentions at the time you got up from the booth? A. I don't recall.

Q. I will read this question and answer and ask you if you agree with having made that statement at that time:

"The Prosecutor: Go ahead, sir. A. At this part, Mrs. Compston got up since she is the regular barmaid there, the person managing. She got up, stepped over to Noe, where all the scuffle was going on. [p. 667] Noe shoved her, kept on kicking these people that he had on the floor."

Do you remember having given that testimony at that earlier time? A. I have given that testimony at some time. I can't recall where.

Q. You observed Noe shove Mrs. Compston? A. Yes, sir, I did.

Q. So, Mrs. Compston was incorrect when she told us yesterday that she had never been touched or shoved or was not involved in the altercation? A. Yes, Mrs. Compston was incorrect.

Q. "At that time I stood up and attempted to spray Michael Noe with a can of mace that I had."

Do you remember that answer? A. No, sir. I believe that I said that with the intent to use the mace.

Q. "The tear gas didn't seem to work very much. Instead of coming out in a liquid stream, it came out in a dust and just generally sprayed everybody there."

Do you remember that response to that question at that time? A. Yes, sir.

Q. "That is all the action I got into. All I wanted to do was stop the fight at that point." [p. 668] A. That's correct. That was my intention.

Q. That is the point in time when the mace went over everybody in the bar; isn't that correct? A. I assume.

Q. At that point in time you had not identified yourself as a police officer; had you? A. No, sir.

Q. Did you at any time identify yourself as a police officer? A. No, sir, I did not.

Q. Do you remember in the trial at Common Pleas where I asked you with regards to your intent when you got out of the booth? A. Sir, I don't recall exactly what testimony I gave in Common Pleas Court.

Q. Let me direct your attention to Page 318 of that transcript:

"At that time I read you this same statement:

"At that time I stood up, attempted to spray Michael Noe with chemical mace that I had. The tear gas didn't seem to work very much. Instead of coming out in a liquid stream, it came out in a gas and just generally sprayed everybody there. That is all the actions I got into. All I wanted to do was stop the fight at that point."

Then I asked you: Do you remember making that statement at the preliminary hearing? [p. 669]

Your answer was:

"Well, that was my intent."

Q. That was your intent, to stop the fight with Noe?"

A. Correct.

And when you got out, up out of the booth, you turned to Noe to spray the mace?"

A. Correct.

And the mace malfunctioned; isn't that correct?"

A. Yes.

Do you remember that series of questions and an-

swers at the point we discussed this matter at that second trial? A. That is basically a correct statement.

Q. That is a correct statement? A. It is basically correct.

Q. Do you remember when you told Captain Smith the morning of March 1st when you were taken to police headquarters, do you remember what you told him as to the first time that you withdrew the mace? A. No, sir, I do not.

Q. I am examining off Exhibit 25 and we are on the second page. I will ask if you remember — You do remember a statement being made at that time? A. Yes.

Q. You do remember a stenographer being in there? A. Yes, I do. [p. 670]

Q. "I got this tear gas out of my pocket, sprayed it straight up in the air as these guys were stomping me. It didn't work and it didn't do any good with them."

Do you remember having told Captain Smith and Captain Borne that the first time you got it out of your pocket was when you were on the floor at that earlier time?

Mr. Hughes: Objection, Your Honor. That statement does not say that the first time I got that out of my pocket was on the floor.

The Court: Do you remember making the statement? A. No, sir, I don't.

The Court: Set the record straight. I will overrule your objection.

Q. (By Mr. Taylor) I believe you told the ladies and gentlemen of this jury a few minutes ago that Noe went out the door and you chased him and you caught him. Was that the essence of your testimony? A. That was my intention, sir, to catch that man.

The Court: What was your testimony? A. I did; that is correct, yes, sir.

Q. (By Mr. Taylor) You did testify that you went out and then you caught up with him; right? A. Yes, sir.

Q. I believe it has been your testimony that you even think this man was shot at the time that he was running; isn't [p. 671] that correct? A. I don't recall making that statement.

Q. Was it your testimony that you think that the bullet that you fired outside didn't hit Mr. Noe? A. Would you repeat that question?

Q. Do you have an opinion as to what bullet is supposed to be the one that mortally wounded Mr. Noe? A. Yes, I do.

Q. What bullet was that? A. That was the shot fired at him inside the place.

Q. So, it was implicit within your testimony that this man had a wound at the time you were chasing him; isn't that correct? A. No, that is not correct.

Q. But there is no question that it is a distance of 14 feet from the front of that bar to the curb; isn't that correct? A. I have never measured it. I would assume it is a correct statement.

Q. You caught him at some point before he got to the curb? A. Yes, sir.

Q. You did run out and you did catch him? A. Yes, I did catch him.

Q. Do you remember the testimony that you gave to [p. 672] Captain Smith and Captain Taylor at that morning as it regards what happened to you when you went outside this door? A. I can't recall exactly.

Q. Again, going to Page 2:
"When I stepped out the front door, this guy jumped me. We wrestled, struggled around on the sidewalk

in front of the bar. I don't know where that went; the man had my arm. I had the gun in my hand. I managed to knock him to the sidewalk."

Mr. Belcher, do you remember that testimony? A. Basically.

Q. Did the man jump you or did you chase this man which had a wound in him out and catch up with him? A. I believe that the man was attempting to escape from me. I grabbed his shirt from the back and that's when this trouble began.

Q. How's come you told Captain Smith he jumped me? A. I was merely holding him, sir, and he immediately began to resist or fight me, so in essence he jumped me.

Q. Mr. Belcher, it is my understanding from your testimony a few moments ago that the geographical location on the diagram where the altercation was taking place was over this table and around this table, near the juke box and at the extreme west end of the bar; isn't that correct? A. That's true. [p. 673]

Q. I believe your testimony was to the effect that you were in a position that your feet was up over one of these tables, that it had been shoved up against the wall, and you were in an impossible position at that location; isn't that correct? A. That's correct.

Q. I believe your testimony was that when you discharged this firearm the two bodies fell on you; isn't that correct? A. Yes.

Q. Is that diagram a true and adequate representation as to where these bodies were immediately after the incident? A. Approximately.

Q. Mr. Stengel was — Did they move after you shoved them off of you and you went after Noe? Did they move from the table over here where you were

in this impossible position? A. Do you mean did they move around on their own power or anything like that?

Q. Yes. A. Very little.

Q. Were these bodies in a different position when you came back outside from having the incident from Noe than they were when this altercation was taking place over here at the table? A. I believe that Casey Stengel may have been able to move himself a little bit, but I don't think Bob Ruff was able to.

Q. So we understand your testimony in this trial, it is our understanding that — it is my understanding — and I want to be correct on it — that somewhere in this altercation the weapon or firearms became disengaged from your body; is that the essence of your testimony? A. That's correct.

Q. I believe you told the jury that you were scared that one of these men who were attacking you would see this weapon and kill you with your own weapon; isn't that correct? A. That's correct.

Q. Because it was laying on the floor somewhere and then almost intuitively it was under your back and you found it just before you was going to pass out? A. I was searching for the weapon, sir.

Q. In your search — as a matter of fact — didn't you find that weapon in your waistband? A. No, sir, I did not.

Q. Let me ask you again if you remember a statement that you gave to Captain Taylor, Captain Borne and Captain Smith, page 2:

"Got this tear gas out of my pocket, sprayed it straight up in the air as these guys were stomping me. It didn't work. It didn't do any good with them. I couldn't get [p. 675] them off me.

Finally, just before I felt I was going to pass out, I rolled over on my stomach on the floor, pulled this pistol from my waistband, my pants, and was dragged by the hair of my head."

Did you pull the pistol from your waistband or did you find it under your back? A. At the time I made that statement, sir, I would assume that — I would admit that I did tell Mr. Smith, Captain Smith, that statement.

Q. The thing I am concerned about now is which one is the truth. A. At the moment I made that statement, sir, I was still confused. I was being questioned within a short time after the incident. I since then had much time to think about the incident and I know now that I found the gun on the floor beneath my hips.

Q. Did you ever go to any of your superior officers and tell them that you had given them an incorrect statement? A. No, sir.

Q. Still didn't identify yourself as a police officer? A. No, sir, I did not have time to.

Q. You was chasing Noe outside. Did you yell halt? A. No, sir.

Q. Did you fire a warning shot into the air? [p. 676] A. No sir, I did not fire warning shots.

Q. You were in the National Guard, weren't you, Officer Belcher? A. Yes, sir, I was.

Q. Participate in athletics? A. Yes, sir, I have.

Q. Amateur boxer? A. Yes, sir.

Q. No doubt in your mind and you observed that Agnes Morgan started that dispute; didn't she? A. I did not make that statement, sir.

Q. No. There is no dispute that you observed it and the original aggressor in that dispute was Agnes Morgan back there; isn't that correct? A. I could not

make that statement, but I do not know what started the argument or what the argument was about.

Mr. Taylor: Let me confer one moment.

(Thereupon followed a discussion at plaintiffs counsel table.)

Mr. Taylor: That concludes my examination, Your Honor.

The Court: Do you have any other questions?

Mr. Hughes: Yes, Your Honor, if I might. [p. 677]

Redirect Examination

By Mr. Hughes:

Q. Officer Belcher, please step to the drawing. Pick up the pointer. I believe you have previously testified and pointed out on the photograph the either coat hanger or side of the booth that Mr. Noe was hanging on as he was stomping Mr. Morgan. Can you point that out on the drawing? A. It was on the corner of the first booth to the west of the piano.

Q. Where was Mr. Morgan lying? A. Mr. Morgan was lying in this location directly south of the booth, of the first booth.

Q. How big approximately is Mr. Morgan? A. I couldn't estimate his size at the time.

Q. Let's assume that he is five foot, six - approximately how big is one of those booths?

The Court: Will you come up, please, gentlemen.

(Thereupon followed a discussion off the record.)

Q. (By Mr. Hughes) So, Mr. Morgan was laying somewhere immediately south of that booth; is that correct? A. Yes, sir, I believe that rather than lying he was more in a sitting position attempting to support himself.

Q. Where was Bonnie Lohmann at this time? A.

Miss Lohmann was in the center of the three booths, I believe against the north side of the wall or the center of [p. 678] the booth, seat.

Q. How big is one of those booths approximately, as best you can estimate it? A. Approximately six feet.

Q. Approximately how far was Miss Lohmann from Kyle Morgan while he was being stomped? A. It would be merely the width of one of the booths.

Q. Again point out approximately where your head was at the time that you fired the shots. A. Sir, at the time that weapon discharged my head was in the corner, in the space between the juke box and the wall to the southwest corner of the bar.

Q. Which way was your body laying? Where approximately would your feet have been then? A. My feet would have been in a northeasterly direction, probably in a 45-degree position from the corner of that bar.

Q. Assuming that this drawing is accurate, would your feet then approximately have been, if you were laying straight out, at about the same position as the feet of Messrs. Ruff. and Stengel? A. Referring to the drawing, my feet would be approximately in this area (indicating.)

Q. I believe your testimony was that you slid out of the bar. Point out exactly — pardon me, out of the booth — where you were when you slid out of the booth. [p. 679] A. I was seated in this booth, the center booth, on the west side of the booth at this point. I was seated towards the outside of the booth, this aisleway.

Q. How far out of the booth had you gotten at the time you were jumped? A. I was still touching the booth, sir.

Q. Had you removed the tear gas from your pocket prior to the time you were jumped? A. Yes, just prior.

Q. In point of time as you were sliding out of the booth, did you fire the tear gas before you were jumped or vice versa? A. I could not truly and honestly say.

Q. Did you fire the tear gas at any time while you were still up before you had fallen to the ground? A. Yes, sir, I did.

Q. Did you fire the tear gas or continue firing the tear gas after you were on the ground? A. I did.

The Court: Come up here, gentlemen.

(Thereupon followed a discussion off the record.)

Q. (By Mr. Hughes) Officer Belcher, after you fired the weapon, I believe your testimony is — Pardon me, You can return to the stand and we can take the drawing away — After you fired the shots, I believe it is your testimony that one of the gentlemen fell on top of you and you had to shove [p. 680] him off to get up; is that correct? A. Yes, sir.

Q. Do you know now whether that was Mr. Stengel or Mr. Ruff or who it was? A. Yes, I know now.

Q. Who was that? A. That was Bob Ruff.

Q. On the drawing — I moved it too soon — but we don't have to get it back out — is he the body closer to the door? A. Yes, sir.

Q. Then you got up off the floor? A. Yes.

Q. How many shots had you fired at that time? A. Three shots, sir.

Q. How far ahead of you, as best you could estimate it, was Michael Noe at the time you both went out the door? A. I don't believe that Mike Noe was any further than two large strides.

Q. I believe that you testified on cross-examination that you believed that Mr. Noe, the fatal shot into

Mr. Noe, was fired inside the bar; is that your opinion?
A. Yes, it is.

Q. However, as you went out the door or at any time prior to the time when I think you testified that you hit him with your revolver — pardon me — with your automatic, did you [p. 681] notice or observe that he was wounded or that there was any blood on his shirt? A. I am going to have to ask you to repeat that, sir.

Q. When did you first notice any blood on his shirt?

The Court: I don't think it's been established that there was any blood on his shirt. I think you better withdraw that question and put it in a different form.

Mr. Hughes: Thank you, Your Honor.

Q. When did you first observe blood, if you did?
A. I first observed blood on Mike Noe's white shirt front just before he fell to the sidewalk in front of the bar.

Q. Was that before or after you had hit him and the gun had gone off outside? A. It was after I had struck him with the pistol.

Q. Physically where were you and Mr. Noe located at the time you first — pardon me — at the time that you hit him with your pistol? A. Mike Noe and I were grappling with each other directly in front of the bar to the south of the entrance to the bar. Mike's back was roughly or approximately in front of the window of the bar. He would be facing westward towards Summit Street and I was facing eastward.

We were within a foot or two of the plate glass window.

Q. Then how did he get from that position to the position that is shown on the sidewalk as approximately, I would guess [p. 682] in feet, about seven feet

from the entrance and his head, about 14 feet? A. I was holding on to Mike's arms. I believe he made a couple of steps and as he started to fall to the floor, or to the sidewalk, or as he collapsed, I held onto him until he laid on the sidewalk.

Q. In your statement to the firearms review board, which I think was alluded to by counsel in his cross-examination of you, you used the word jump. Could you explain what you meant by the use of that word outside? A. Yes, sir. As I caught up with Mike, I grabbed his shirt and he wheeled around and made an effort to lunge toward me.

Q. Was there a continued altercation outside? A. Yes.

Mr. Hughes: No further questions, Your Honor.

The Court: Do you have any other questions, Mr. Taylor?

Mr. Taylor: No, sir.

Civil Action No. 72-67

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

Eastern Division
(Title omitted in printing)

ORAL MOTION FOR DIRECTED VERDICT
ON BEHALF OF RAYMOND BELCHER
AT END OF PLAINTIFFS' CASE IN CHIEF

[p. 547]

* * * * *
The Court: I will hear from you, Mr. Hughes.

Mr. Hughes: Your Honor, at this time I would ask for a dismissal of the complaint against Officer Belcher as to Claims 1, 3 and 6.

The Court: One, 3 and 6 or 1, 3 and 5?

Mr. Hughes: One, 3 and 5.

I do so, Your Honor, based upon the evidence as I understand it at the present time, and to do so I will briefly take the position that there is no evidence in the record at this time to show that in any way Officer Belcher, through his actions in the bar that night, in any way deprived Casey Stengel of any of his civil rights.

The civil right that would seem to me —

The Court: Casey Stengel or the two decedants?

Mr. Hughes: Or the two decedants. [p. 548]

As I would understand, the gravamen of this complaint is basically a tort was committed without provocation upon each of the three plaintiffs by Officer Belcher at the time —

The Court: Isn't the gravamen of the offense, Mr. Hughes, that Officer Belcher as an off duty policeman had the right and even the duty to carry out a normal police function when he knew that there was a fight going on in Jimmie's Cafe among the patrons in that cafe?

Is there any question in this case, under this record so far, that Officer Raymond Belcher was acting under color of law?

Mr. Hughes: Your Honor, it is my position that he was acting in line of duty under color of law as a policeman of the City of Columbus.

The Court: That being established, isn't the real nitty-gritty gravamen here whether or not it was necessary under all the facts and circumstances for Belcher to resort to shooting either — to carry out his police function or to protect himself?

Mr. Hughes: That's precisely it, Your Honor, and I in fact would make my argument based primarily on the latter rather than the former.

It is our belief first and foremost that Officer Raymond Belcher at that time was defending himself when he considered himself to be in grave, serious danger of great [p. 549] bodily harm and/or death as a result of what was being done to him.

It is only in the alternative, or in addition thereto, that we would argue that the force was used pursuant to the actions of a police officer who was a witness to a crime going on in his presence and was acting as a police officer.

I would put more reliance on the fact that he was in jeopardy and he fired based on the evidence in the record in order to defend himself.

If I might briefly summarize the evidence, the evi-

dence from the only eyewitness that has testified as of this time in this case is the evidence that Casey Stengel has given to us.

We will attack that if we have to put on a defense, but taking his statement in the light most favorable to him, as I think the Court has to do for purposes of this motion, he states that he did not kick Officer Belcher; that he did not see anyone else kick Officer Belcher.

The last thing he remembers concerning Officer Belcher was that Officer Belcher was on the ground; that Robert Ruff was standing over Officer Belcher, and that he turned his back to go back to wherever the other fracas was going on, and that he was then shot.

His testimony is that he doesn't even know who shot him. The only way that it can be shown in this record as of [p. 550] this time who fired the shot is by the admissions which have come in as hearsay without objections through the various documents, reports, statements and testimony of the various police officers that did interview Officer Belcher.

Officer Belcher admitted, and there is no question about this, that he did do the shooting. If we are going to take that admission, we have to take that admission as a whole and contained within that admission is the justification of self-defense.

"I was on the ground, etc. Three people jumped me and I had to shoot them."

There are numerous statements of that effect in the record. There is absolutely no conspiracy evidence in the record as to the claim of self defense. The burden of proof is on the plaintiffs to go forward.

At the present time there is absolutely nothing in

this record. It is totally devoid, totally devoid of any possible contradiction of the statement of Officer Belcher which has come in through direct testimony of witnesses called by the plaintiffs as an admission.

Now, the explanation of the shooting is on par with and equal to the admission of the shooting. Therefore, the state of the evidence, as I see it right now, is that there is an uncontradicted explanation of justifiable homicide under the circumstances as to each of the three persons involved. [p. 551]

The Court: Mr. Stengel is still living, so we only have two homicides.

Mr. Hughes: I withdraw that remark.

As to each of the three persons, there is an absolute excuse in the law of the State of Ohio for their having been shot and there is no contradictory evidence, nothing whatsoever, and to allow the case to go forward is simply to allow the jury to speculate as to what may have happened outside the record.

For that reason, Your Honor, we believe that we are entitled, as to each of the claims concerning the two decedants and as to the claim of Casey Stengel against Officer Belcher, to a directed verdict at this time.

The Court: Thank you, Mr. Hughes.

You may proceed, Mr. Lewis.

Mr. Lewis: If it please the Court:

First I would like to address myself to the technical part of Mr. Crawford's motion regarding the evidence about the appointment of the two administrators which I believe the Court had some concern about, was passed over.

I believe the state of the situation is that we have alleged in our complaint the existence of their ap-

pointment of these administrators. It has been denied generally in the complaint or in the responses thereto.

Thereafter the Court put on a pretrial order that was [p. 552] joined by both parties that listed the controverted issues and the uncontroverted issues.

It is my recollection that that is not in the controverted issues in any way, shape or form from the pleadings.

In addition to this, I believe that Rule 9 (b), I believe it is of the Rules of Civil Procedure, Federal Rules of Civil Procedure, requires that there be some specific — if they want to contest the allegations of the complaint, this must be done specifically in a pleading, and I think that those two points basically dispose of that technical issue.

Now, regarding some of what I feel are the larger issues that I have heard discussed here, I think it is difficult with this number of exhibits — I know the Court has followed this closely, and is quite familiar with a lot of details of the evidence — but for instance things that the Court seemed interested in was there anything in the record about Raymond Belcher drinking hard liquor at the time?

There is in the exhibits and reports and this type of thing that I think are all now in evidence, and I don't think on a motion to dismiss the case at this stage, that it can be — there is a mass of evidence there in these exhibits that's interrelated to all the oral testimony.

The only thing that we have introduced thus far is tied into the oral testimony. I frankly, in view of those exhibits, fail to follow some of the arguments that there isn't [p. 553] any proof of death here.

There is the presence of the people there. There is the shooting. There is the bullets, and I don't believe that the overall picture of all this evidence, that I need to address myself to that argument as I follow it.

I think the Court has properly stated what is necessary to tie in the conspiracy, the overt acts, and I think if there is anything that I could attempt to address myself to, that I would attempt to do so, but this is all the response that I want to make at this time.

The Court: Mr. Lewis, I believe that Mr. Crawford said in respect of Count 1 in which Mr. Dwight Joseph is a defendant along with Raymond Belcher, I think Mr. Crawford said that the doctrine of responding to superiors doesn't apply in that cause of action.

Let us assume even that Belcher had one or two drinks at Jimmie's Cafe that night, and let us assume even that the partaking of one or two drinks to some extent at all interfered with his judgment and his control.

Is a chief of police the insurer of the conduct of every off duty patrolman who under the regulations is required to wear a firearm?

Mr. Lewis: No.

The Court: And how are you going to hold Dwight Joseph responsible under the record as you have made it so far? [p. 554]

Mr. Lewis: If the Court will recall that I questioned Mr. Joseph about the regulations. There is evidence in the record.

The Court: You don't contend that there is anything illegal about this regulation? You don't contend it is unconstitutional; do you?

Mr. Lewis: No, we haven't contended that.

The Court: You may question the wisdom of the regulation but facially it's legal and constitutional; isn't it?

Mr. Lewis: If the Court please, Mr. Taylor, that particular phase that the Court is making inquiry about, he has done some research on.

The Court: I want to know what evidence is there in the record that you can make Dwight Joseph responsible for Belcher involving himself, whether justified or not, in the fight that was going on in Jimmie's Cafe that night.

Mr. Lewis: Well, it is in the record that Dwight Joseph, through these regulations, the regulations are in evidence, he has some leeway by the language how they may be enforced, and it is in that area that we think there can be some responsibility.

The Court: Mr. Lewis, let's suppose that there was absolutely no evidence in the record whatsoever that Raymond Belcher had any kind of liquor or beer, and under the same [p. 555] circumstances exactly, would you be able to pull Dwight Joseph into this claim.

Mr. Lewis: I think if the evidence would show that, it would weaken the situation a little bit, but the gravamen of the complaint —

The Court: That being the case, would that make the chief of police almost the guarantor of the conduct of every off duty policeman?

Mr. Lewis: No, I don't think that is possible. It is only where we have a regulation the chief has drawn that requires —

The Court: Let's suppose he didn't draw it. The fact that he did draw that, if it is in accordance with his constituted authority, it doesn't make any difference whether he drew it or his predecessor drew it.

Did the fact that he drew that make him, let's say, the insurer of the conduct?

Mr. Lewis: No, but the regulation — and Dwight Joseph testified on his testimony — that under that regulation it was so strict that he would have been disciplined if he had not been carrying that weapon at that time and place and the circumstances.

It is in that area that we feel that the tie in the first cause of action comes.

The Court: Does that complete your argument? [p. 556]

Mr. Lewis: Yes.

The Court: The motions are submitted.

The Court will recess for approximately 15 minutes, at which time he will announce his decisions on the motions.

The clerk will please recess the Court.

(Recess taken.)

The Court: The record will show that the Court has considered the motions of all defendants for a directed verdict under the provisions of Rule 50, Federal Rules of Civil Procedure, made at the close of the plaintiffs evidence in respect of Claims 1 through 6 inclusive as set forth in the amended complaint; the arguments in support of said motions and the arguments contrary thereto.

The Court first disposes of the motions in respect of Claims 1, 3 and 5.

Upon full consideration of all the evidence presented by plaintiffs in proof of such claims and being fully advised in the premises, the Court finds and decides in respect to the defendant Raymond Belcher that reasonable minds could arrive at different conclusions, and therefore the motion for a directed verdict in favor of the defendant Raymond Belcher is denied as to Claims 1, 3 and 5.

In respect to the defendant Dwight Joseph, and upon the same consideration of the evidence, and being fully advised in the premises, the Court finds and decides that reasonable [p. 557] minds would not arrive at a different conclusion on the evidence in the record, and therefore the motion for a directed verdict in favor

of the defendant Dwight Joseph is granted as to Claims 1, 3 and 5, and the defendant Dwight Joseph is hereby dismissed as a defendant in Claims 1, 3 and 5.

The Court next disposes of the motions for a directed verdict as to all defendants named in Claims 2, 4 and 6.

Upon full consideration of all the evidence presented by plaintiffs, in proof of the cause or causes of actions set forth in Claims 2, 4 and 6, the Court finds and decides that reasonable minds would not arrive at different conclusions on the evidence in the record and therefore the motions for a directed verdict in favor of all defendants is granted as to Claims 2, 4 and 6, and such named defendants being Raymond Belcher, Dwight Joseph, John Hawk, Francis B. Smith, Robert Taylor, Richard Borne, Earl Belcher, James J. Hughes, Sergeant P. Hopkins, E. Young, M. Hardin are hereby dismissed as defendants in this action.

Now, the defendants who have been dismissed — and they are all defendants in Caims 2, 4 and 6 — will now please leave the courtroom. Of course, the defendant Raymond Belcher will remain, and upon your leaving the United States Marshal will return the jury to the courtroom

* * * * *

Civil Action No. 72-67

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
Eastern Division
(Title omitted in printing)**

**PORTION OF CHARGE TO JURY
OF DISTRICT COURT**

[p. 761]

In this case the Plaintiffs claim damages for personal injuries alleged to have been suffered or sustained by them as a proximate result of deprivation under color of some State law or municipal regulation of rights and privileges and immunities secured to the Plaintiffs both by the constitution of the United States and by an act of Congress providing for equal rights of all persons within the jurisdiction of the United States.

Specifically, the Plaintiffs make three claims as [p. 762] follows:

One; Plaintiff Stengel claims that the Defendant Raymond Belcher illegally used excessive force when Beicher shot Stengel on the morning of March 1, 1971 while acting under color of State law.

Two and three; the Plaintiffs Charles Ruff and Timothy Noe claim in behalf of the decedents Robert Ruff and Michael Noe respectively that the Defendant Raymond Belcher illegally used excessive force when Belcher shot the decedents on the morning of March 1, 1971 while acting under color of State law.

Section 1983 of Title 42, United States Code, provides that

"Any inhabitant of this Federal district may seek redress in this court by way of damages against any person or persons who, under color of any law, statute, ordinance, regulation or custom, knowingly subjects such inhabitant to the deprivation of any rights, privileges or immunities secured or protected by the constitution or laws of the United States."

The statute just outlined to you comprise one of the civil rights enacted by the Congress under the 14th Amendment to the Constitution of The United States.

The 14th Amendment to the Constitution provides that

"No state shall make or enforce any law which shall [p. 763] abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law."

In order to prove his claim, the burden of proof is upon the Plaintiff Stengel to establish by a preponderance of the evidence the following facts:

First; that the Defendant Belcher used excessive force by shooting Plaintiff Stengel on or about March 1, 1971 at approximately 1:30 A.M.;

Second; that the Defendant Belcher then and there acted under color of some state or local law;

Third: that the acts and conduct of the Defendant Belcher which Plaintiff Stengel complains of were knowingly done in such way and manner or under such circumstances as to deprive Stengel of his Federal Constitutional right not to be denied or deprived of his life or liberty without due process of law;

Fourth: That the Defendant Belcher's acts and conduct so done were the proximate cause of injury and consequent damage to Plaintiff Stengel.

In order to prove their claims, the burden of proof is upon Plaintiffs Charles Ruff and Timothy Noe as administrators of the estates of Robert Ruff and Michael [p. 764] Noe to establish, by a preponderance of the evidence the following facts:

First: That Defendant Belcher used excessive force by shooting decedents Robert Ruff and Michael Noe on or about March 1, 1971 at approximately 1:30 A.M., wrongfully killing them.

Second: That the Defendant Belcher then and there acted under color of some state or local law;

Third: That the acts and conducts of the Defendant Belcher, of which the Plaintiffs complain, were knowingly done in such a way or manner or under such circumstances as to deprive decedents Robert Ruff and Michael Noe of their Federal Constitutional rights not to be denied or deprived of their life without the due process of law;

Fourth: That the Defendant Belcher's acts and conduct so done were the proximate cause of the injury and consequent damage to the decedents Ruff and Noe.

Acts are done under color of law of a state not only when state officials act within the bounds or limits of their lawful authority, but also when such officers act without and beyond the bounds of their lawful authority.

In order for unlawful acts of an official to be done under color of any law, however, the unlawful acts must be done while the official is purporting or pretending to act in the performance of his official duties. That is to [p. 765] say, the unlawful acts must consist in an abuse or misuse of power which is possessed by the official only because he is an official, and the unlawful acts must be of such a nature and be committed

under such circumstances that they would not have occurred but for the fact that the person committing them was an official purporting to exercise his official powers.

As you will note, the Federal statute which the Defendant is alleged to have violated covers not only acts done by an official under color of any state law but also acts done by an official under color of any ordinance or regulation of a municipality of a state, as well as acts done by an official under color of any regulation issued by a municipal official.

The manner in which Defendant Belcher may have acted under color of state law was that he carried a gun, a side arm, while off duty. The reason he carried a weapon is because of a police regulation issued by the Chief of Police of the Columbus Police Department which reads in part as follows:

"Members of the Division of Police while off duty shall carry the weapon and ammunition issued to them:

One: Carrying a personal weapon off duty. Members of the Division of Police desiring to carry a personal handgun instead of their issued revolver, shall request [p. 766] permission through the Police Range Officer."

An act is done knowingly if done voluntarily and intentionally and not because of some mistake or accident or some other innocent reason.

The 14th Amendment to the Federal Constitution provides that no state shall deprive any person of his life or liberty without due process of law.

The liberty of the individual which the Federal Constitution thus secures and protects is not an absolute and unqualified freedom or privilege to do as one pleases at all times and under all circumstances, but

it is always subject to reasonable restraints, including of course such restraints as are imposed by law.

Plaintiff Stengel and Decedents Robert Ruff and Michael Noe, in common with the defendant and all other persons living under the protection of our constitution, had the legal right at all times not to be deprived without due process of law of life or any liberty secured or protected to them by the constitution or laws of the United States.

Stengel, Ruff and Noe had the liberty to be free from unlawful attacks by the use of excessive force upon the physical integrity of their persons.

It has always been the policy of the law to protect from unauthorized violation or interference the physical [p. 767] integrity of every person, so Stengel, Ruff and Noe had the right under their Federal Constitution not to be deprived of this liberty involving the physical integrity of their persons without due process of law.

To be deprived of life or liberty without due process of law means to be deprived of life or liberty without authority of the law.

Before the jury can determine, then, whether or not the Plaintiffs were deprived by the Defendant of any of their life or liberty under the Federal Constitution, without due process of law, the jury must first determine, from a preponderance of the evidence in the case, whether the Defendant Raymond Belcher knowingly did the acts alleged; and, if so, whether, under the circumstances shown by the evidence in the case, the Defendant Raymond Belcher acted within or without the bounds of his lawful authority under state law.

For if the Defendant Raymond Belcher acted within the limits of his lawful authority under state law, then

the Defendant could not have deprived Plaintiff Stengel or the Decedents Robert Ruff or Michael Noe of any life or liberty, without due process of law, since the Court finds and instructs you that the state law applicable in this case, that is, a Columbus policeman is required to carry his weapon while off duty, [p. 768] meets the due process of law requirements of the Federal Constitution.

The mere fact that the evidence in the case may establish physical contact between Defendant Raymond Belcher and the Plaintiff Stengel and the Decedents Robert Ruff and Michael Noe which resulted in serious physical personal injury to Stengel, and in death for Ruff and Noe, is not proof that the Defendant acted beyond his lawful authority under state law.

A police officer, even though off duty, has the lawful authority to intervene in a breach of the law, a breach of the peace, to restore order, to protect innocent bystanders, to protect property and to arrest law violators;

However, he may not use excessive force. Such use would be without lawful authority.

A police officer has the lawful authority to use such force as is necessary to effect an arrest. He may also use sufficient force to subdue a law violator. He may not use more force than is necessary to make an arrest and protect himself from injury.

It is the general rule that a police officer may not use deadly force to make an arrest.

Use of a gun would be use of excessive force unless he discharges his firearm in self defense when he has reasonable cause to believe that he is in danger of his [p. 769] life or safety.

The law does not measure nicely the degree of force which may be used to repel an attack. A police officer who is assaulted may use such force as is necessary under the circumstances to protect himself and to subdue his attacker. He may not shoot his attacker unless he has reasonable cause to believe that he is in danger of his life or great bodily harm.

The fact that a person or persons have assaulted a police officer who is acting in the performance of his lawful duties does not alone justify the use of deadly force by the police officer.

Rather, the police officer may use deadly force only if he has a reasonable fear of death or great bodily harm.

An assault is the use of physical threat or menacing acts toward another with intent to cause personal injury. An assault is an intent to injure coupled with a present ability to do bodily harm to another.

Touching the person of another is not a necessary element of an assault.

A battery is the actual touching or striking of the person of another with intent to inflict some personal injury, however slight.

To constitute self defense there must have been, on the part of the police officer, a careful use of his [p. 770] faculties and reasonable grounds to honestly believe that there was an immediate danger to his person or to his life. There must have been a sufficient act, coupled with an apparent present ability to carry it out, to cause the police officer to reasonably believe that the other party intended to kill or do him great bodily harm, and that the shooting was necessary to save himself from death or great bodily harm.

If the police officer has reasonable ground and an honest belief that he was in imminent danger of death or great bodily harm, and that the only means of escape from such danger was by injuring or killing his assailants, then he was justified even though he was mistaken as to the existence of such danger.

In determining whether the Defendant Belcher had reasonable grounds for an honest belief that he was in imminent danger, you must put yourselves in the position of this Defendant with his characteristics, his knowledge or lack of knowledge, and under the circumstances and conditions that surrounded him at that time, you must consider the conduct of the Plaintiff Stengel and the Decedents Robert Ruff and Michael Noe, and determine if their acts and words caused the Defendant to reasonably and honestly believe that he was about to be killed or to receive great bodily harm. [p. 771]

If in the careful and proper use of his faculties, the Defendant honestly believed and had reasonable grounds to believe that an assailant was not able and did not intend to kill or do great bodily harm to the Defendant, then the Defendant having notice of his adversaries' position was released from the danger and the right to use force in self defense ended.

If thereafter the Defendant continues to fight, he becomes the aggressor and a subsequent injury to another is unlawful.

An injury or damage is proximately caused by an act or a failure to act whenever it appears from the evidence in a case that the act or omission played a substantial part in bringing about or actually causing the injury or damage, and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission.

The issues to be determined by the jury in this case are:

One: When the Defendant Raymond Belcher acted toward Plaintiff Casey Stengel and Decedents Robert Ruff and Michael Noe, did the Defendant act under color of state law or municipal regulation?

When I speak of the Defendant acting toward Plaintiff Casey Stengel and the Decedents Robert Ruff and Michael [p. 772] Noe, I am referring to allegations I have already outlined in the earlier instructions, Plaintiffs' claims and essential elements.

Specifically I am referring to the claim that Defendant Raymond Belcher used excessive force when he shot Plaintiff Casey Stengel and Decedents Robert Ruff and Michael Noe.

If your unanimous answer to this question is no as to all of the Plaintiffs' claims, then you should return verdicts in favor of the Defendant.

If your unanimous answer is yes regarding any of the Plaintiffs' claims, then you must proceed to a resolution of the second issue regarding that claim or claims as next stated.

Two: Did the Defendant act within the bounds or limits of the lawful authority given to him under state law or municipal regulation?

If your unanimous answer to this question is yes on those claims you are still considering, you should return a verdict in favor of the Defendant on those claims.

If your unanimous answer is no on any of the claims or claims still remaining, then you must proceed to a resolution of the third issue regarding those claims or claims as next stated:

Three: Did Plaintiff Casey Stengel and Decedents [p. 773] Robert Ruff and Michael Noe suffer depriva-

tion of life or liberty without due process of law; as explained earlier in the instruction, 'life, liberty and due process of law', by reason of the act or acts of the defendant conducted outside the proper scope of his lawful authority?

If your unanimous answer is no on those claims you are still considering, you should return a verdict in favor of the defendant on those claims.

If your unanimous answer is yes on any of the claim or claims still remaining, you must proceed to a resolution of the issue of damages regarding those claim or claims as next stated.

Civil Action No. 72-67

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

**Eastern Division
(Title omitted in printing)**

**JOINT EXHIBIT 44(b)
GENERAL ORDER**

Columbus Police

Columbus, Ohio

GENERAL ORDER NO. 70-9D	DATE OF ISSUE July 30, 1970
EFFECTIVE DATE July 30, 1970	RESCINDS General Order 70-1D
SUBJECT Weapons Regulations	REFERENCE Rule Book, Sections 480, 482

PURPOSE: The purpose of this general order is to clarify the weapons regulations of the Columbus Division of Police as they relate to types of authorized weapons and related equipment, the carrying of personal weapons and related equipment, the responsibility for their inspection, repair and maintenance, and the responsibility to report any discharge of a police weapon.

I GENERAL INFORMATION

A. Carrying a Weapon on Duty

Members of the Division of Police, while on duty, shall carry the weapon and ammunition issued to them.

1. Carrying a Personal Weapon on Duty

Members of the Division of Police desiring to carry a personal handgun in addition to their issue revolver shall request permission through the Police Range Officer. The Range Officer, after the weapon has been inspected and registered, shall forward the request to the Chief of Police for approval. Permission may be granted provided the following conditions are met:

- a. The weapon shall be inspected, registered and approved by the Police Range Officer.
- b. The weapon shall not exceed .38 caliber.
 - (1) The .357 Magnum is prohibited.

B. Carrying a Weapon Off Duty

Members of the Division of Police, while off duty, shall carry the weapon and ammunition issued to them.

1. Carrying a Personal Weapon Off Duty

Members of the Division of Police desiring to carry a personal handgun instead of their issue revolver shall request permission through the Police Range Officer. The Range Officer, after the weapon has been inspected and registered, shall forward the request to the Chief of Police for approval. Permission may be granted provided the following conditions are met:

- a. The weapon shall be inspected, registered and approved by the Police Range Officer.

- b. The weapon shall not exceed a .38 caliber.

(1) The .357 Magnum is prohibited.

It is recognized that there may be certain occasions when carrying a weapon while off duty would be impractical. An example is when a member is engaged in some sport or activity and the accepted style of clothing would restrict or preclude the carrying of a weapon.

Therefore, it is up to the good judgment of each member as to when it would be impractical to carry a weapon while off duty. If the member feels that the circumstances so warrant, he need not carry the weapon while off duty; however, justification for failing to do so may be required.

C. Type of Handgun Ammunition Specified

1. Regulation Super Vel 110 grain, .38 special, semi-ball, solid nose, factory load cartridges shall be carried and used at all times.
 - a. In those cases where carrying a personal handgun has been authorized, appropriate ammunition may be carried and used.
2. No military or other jacketed bullet ammunition shall be carried. Dum-dum, hollow-point, wad-cutter, tracers or handloads shall not be carried or used at any time.

II INSPECTION, REPAIR AND MAINTENANCE OF WEAPONS

A. Periodic Inspection Required

Supervisory officers are responsible for the periodic inspection of all issued or authorized weapons and related equipment carried by their subordinates, in order to insure that they are in proper working order and fully comply with the provisions of this order.

B. Repair and Maintenance of Issued Weapons and Related Equipment

All issued weapons and related equipment in need of repair, adjustment or refinishing shall be submitted to the Police Range Officer.

1. Members of the Division of Police shall not permit any person, except those authorized by the Police Range Officer to perform repair work of any kind on any issued weapon or related equipment.
2. Members of the Division of Police shall be held strictly accountable for any damage to issued weapons or related equipment, which is caused by roughness, carelessness, or by permitting any unauthorized person to use, tamper with or repair his weapon or related equipment.

III CERTAIN WEAPONS PROHIBITED

A. General

No member or employee of the Division of Police shall carry, have in his possession or use, at any time, any weapon of the type com-

monly referred to as "brass knuckles" or other similar weapons.

1. Any weapon, worn on the hand or concealed in gloves, made of a hard material (metal, wood, plastic, etc.) shall be prohibited by this order.
2. This order does not prohibit the carrying or use of the night stick, riot baton or black-jack.

B. Rifles and Shotguns

Members and employees of the Division of Police are prohibited from carrying, having in their possession or using any personal weapons such as rifles, carbines or shotguns, of any description, while on duty.

C. Other Weapons

Members and employees of the Division of Police are prohibited from carrying, having in their possession or using any personal weapons such as automatic or semi-automatic rifles, carbines or shotguns, of any description, while on duty.

IV REPORTING REQUIREMENTS

A. Procedure to be Followed When Firearm is Discharged

1. An officer shall be subject to discipline if the shooting of a firearm involves:
 - a. A violation of law by him.
 - b. A violation of department regulations.
 - c. Poor judgment involving wanton disregard of public safety.

- d. Accidental discharge of gun through carelessness or horseplay.
- 2. In order to enforce the guidelines for use of weapons, the Police Division shall require a detailed written report on all discharges of firearms except at an approved range.
 - a. Whenever a police officer discharges his firearm, either accidentally or in the performance of police duty, he shall verbally notify his immediate on-duty supervisor as soon as time and circumstances permit. Further, a police officer who discharges his firearm shall forward a written report of the incident through established channels to the police chief and a carbon copy to his superior officer within his tour of duty of the incident.
- 3. Each discharge of a firearm, except at an approved range, shall be investigated by an on-duty commanding officer. After conducting a thorough investigation of the circumstances surrounding the discharge of firearms, the commanding officer shall submit a detailed written report of the results of the investigation to the police chief through channels.

BY ORDER OF:

DWIGHT W. JOSEPH
Chief of Police

APPROVED BY:

JAMES J. HUGHES, JR.
Director of Public Safety

TA-57 .OK nohA BuG
TWO TO THREE DRAFTS ON THE JOB SHOT 101
OHIO TO THREE DRAFTS ON THE JOB SHOT 101
nohA BuG
(including all batches of 101)
(1-1) NO THREE TWO

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JUIN 1 EXHIBIT
24(a)

INSTRUCTIONS: Under R.C. 4129.20 of The Ohio Workmen's Compensation Act, every employer shall record of ALL injuries received by his employees in the course of their employment and report these injuries to the Bureau of Workmen's Compensation WITHIN ONE WEEK after the accident. This form C-71 is to be used only in cases where the injury causes disability of MORE THAN ONE WEEK. It should be completed and signed by the injured employee and his employer and mailed to the nearest office of the Bureau of Workmen's Compensation. Office address is on reverse side of this application.



**STATE OF OHIO
BUREAU OF WORKMEN'S COMPENSATION**

Cleintant's Application For Compensation

Claim No. P.E.

585582

1. CLAIMANT'S NAME	John G. Smith	Address (Street)	Bethelton	Location (City)	Belchertown		
2. Home Address	2237	Street Number	Perdue	County	Franklin	State	Ohio
3. Age	35	Social Security No.	209-30-1029	No. of dependents		Date Report Filed	
Name and address of employer	162 S. Washington Street	City of Columbus - Division of Police			Date of Injury		
4. Date of Injury	March 3, 1971	(Day)	'71	Hour	2:15 A.M.	P.M.	Report Lag
5. Date quit work	(Date last worked)	Date returned to work			Hearing 2:30		
6. Did you receive your wages during disability?	Yes	Occupation			Employment		
7. Description of Injury	Finger			Employer	Occupation		
8. Injury occurred where	Columbus, Franklin, Ohio			On employer's premises?	Yes or No		
9. Describe nature of injury and part of body affected	Finger			Explanations			
10. Name and address of witnessess	John G. Smith			Agency			
				Type of Injury			

JOINT EXHIBIT 24(a-j)

224

Civil Action No. 72-67

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

Eastern Division

(Title omitted in printing)

225

Part	Question	Answer	Comments
11.	If hospitalized, name of hospital	Grant Hospital E.R. V 3-30-71	Nature of Injury
12.	Name and address of physician	309 E. State Street, Columbus, Ohio 43215	Part of Body
13.	Have you filed a previous application concerning this injury?	If so, give claim numbers	Degree of Injury
14.	Have you filed other claims for injury with this Bureau?	If so, give claim numbers and part of body injured	Date Last
15.	Names of all employers for whom you worked during year prior to this injury	Full Wage	
16.	What doctors have you consulted or been treated by within the last two years, and for what illness or injury?	Temporary Treatment	
<p>(If none, so state)</p> <p>I hereby make application to The Bureau of Workmen's Compensation for the payment of money out of the State Insurance Fund for compensation for injuries sustained in the course of my employment, and which have not been necessarily self-inflicted, and for money to pay for medical services, etc., which medical services, etc., were necessary in the treatment of my said injuries. Notice of hearing is hereby waived.</p> <p>I HEREBY AUTHORIZE The Bureau of Workmen's Compensation to pay any or all awards for medical, hospital, and similar service directly to person or persons rendering such service.</p> <p>By signing this application I expressly waive, on behalf of myself and of any person who has hereinafter attended or examined me, or who may hereafter attend or examine me, from disclosing any knowledge or information which they thereby acquired. I have read all the statements contained herein and know the same to be true and correct.</p>			
(If applicant signs by name two witnesses must sign here)		(Signature of applicant. If unable to sign, mark must be made)	
PART II.		Employer's Report of Industrial Injury	
1.	Name of employer	CITY OF COLUMBUS	Street Address 2637 Lexington Ave.
2.	Office address	162 S. Washington Blue, Columbus, Ohio 43215	City or Town Columbus, Ohio
3.	Type of organization	CITY OF COLUMBUS	County or Township Village School District, Union or Township
4.	Do you agree with statements of claimant?	If not, indicate the points of disagreement	
<p>"I, " the above named, do file this joint application, date same <u>Mar 22, 1971</u>, accident description, nature of injury, correct? Make separate report if necessary</p> <p>5. Said city or village does maintain a duly authorized Police or Fire Pension Fund.</p> <p>Was employer a regular employee or cavalry or relief worker?</p>			

OFFICES OF THE BUREAU OF WORKERS' COMPENSATION

THE JOURNAL OF SECURITY

ANSWER _____ 10. DIPLOMA HIGH.

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6

OFFICES OF THE BUREAU OF WORKERS' COMPENSATION



24(5)

NAME Raymond BEAUCHAMP MARCH 22 1972 TIME 932
 PHONE #25-1224 RESIDENCE #2887 PERIOD
 Reported Sick-Injured at 522 1/2 W March 22 1972 I have notified Dr. Lester M. G. D.
 to examine him, and have also notified Supt. George Shantz to investigate the matter.

Officer in Charge of Headquarters.

DISABLED OFFICER'S STATEMENT

I hereby certify that I am Sick-Injured, and that said disability was the result of
Old Back Injury — — — — — 3/1-71.

Date March 22 1972 Signed Raymond Beauchamp

SUPERIOR OFFICER'S REPORT AND RECOMMENDATION

March 22 1972

I have investigated the above case, and find the facts to be as follows:

ILLNESS: or Same as Above

INJURY: ON DUTY OFF DUTY

Signed James D. Jeffreys Rank Patrolman

CERTIFICATE OF DISABILITY

Raymond BEAUCHAMP

Rank Patrolman

Certified off duty 3-22-72

Certified for duty 10

Jan.	July.
Feb.	Aug.
Mar.	Sent.
April.	Oct.
May.	Nov.
June.	Dec.

March 22 1972

I hereby certify I have examined

Raymond Beauchamp
 and find him capable of performing
 duty. By reason of, (here state nature of,
 and anatomical location of disease or in-
 jury and how it incapacitates him.)

Old Back injury
 (3-1-71)

Officer MER 24 1972
 has recovered from his disability, and
 hereby certify him to be physically able to
 perform REGULAR DUTY

JOINT EXHIBIT
24(5)

Police Surgeon

HAVE YOU WORKED ON ANY OTHER JOB IN

PAST 24 HOURS ✓

WHERE 2nd

HOURS 4

EMERGENCY NO TIME LOST
CERTIFICATE OF DISABILITY
F/Tm Raymond Belcher
 Rank F/Tm
 Certified off duty 7-1 1972
 Certified for duty 19
 July July
 Feb. Apr.
 Mar. Sept.
 April Oct.
 May Nov.
 June Dec.

I hereby certify I have examined
Raymond Belcher
 and find him not capable of performing
 duty. By reason of, (here state nature of,
 anatomical location of disease or injury and how it incapacitates him.)

Old back injury
(3/1-71)
 Police Surgeon

JOINT
EXHIBIT
24 (d)

Officer
 has recovered from his disability, and I
 hereby certify him to be physically able to
 perform REGULAR DUTY

Police Surgeon.

HAVE YOU WORKED ON ANY OTHER JOB IN
 PAST 24 HOURS No
 WHERE
 HOURS

JOINT
EXHIBIT
24 (e)

REPORT OF EMPLOYEE'S RETURN TO WORK

NOTICE TO EMPLOYER:—Detach this card and return when the below named employee resumes work, either with your Company or some other employer. It is extremely important that you promptly forward this report to the Bureau WHEN DISABILITY CEASES.

Claim No. PE-585582 Name Raymond L. Belcher

The above employee returned to work on the _____ day of _____, 19____

Remarks _____

Employer _____

By _____

If the employee "is not return to work as soon as possible this Bureau will be notified of the fact."

Form C-13-A

Sister of _____
 Bureau of Workmen's
 Compensation
 Columbus, Ohio

Claim No.

PE-585582

Name

Raymond L. Belcher

Date of Injury

3-1-71

See reverse side

MAR 25 1971

U.S. POSTAGE

City of Columbus
 191 S. Washington Blvd.
 Columbus, Ohio 43215

OHIO

PART II. Attending Physician's Report and Fee Bill

INSTRUCTIONS FOR PHYSICIAN: This form must be completed and returned to the employer within two weeks of first treatment. The employer shall then submit the form to the Bureau. If the returning physician's report treatment is needed, Form C-19 bearing the claim number will be sent to the physician.

1. Give diagnosis and description of injury. *Facet - Strained - Sprain*

2. Was there evidence of head injury? Due: Injury? Infection?
3. If hospital, ambulance, nursing or x-ray services were ordered by you, submit names and addresses.

What further treatment is indicated if any? *S-10 Facets - heat & pressure*

7 days

6. Number of days claimant was disabled from work. *30 days*

ITEMIZED FEE BILL FOR NOT MORE THAN TWO WEEKS' TREATMENT

Fees should be submitted in accordance with the published Fee Schedule.

Date	Where Rendered	Description of Treatment	Amount
3-20-72	Office	Chiropractic - Facet - Pressure	\$12.00
3-27-72	Office	Chiropractic - Heat - Pressure	12.00
4-10-72	Office	Chiropractic - Facet - Pressure	12.00
		Total	\$36.00

If this bill or any part of it has been paid, indicate credit here.

Designate by whom paid.

I hereby certify that all the treatments covered by fee bill above were rendered solely on account of injury described above and were rendered by me personally Under my professional direction. If claimant is not a patient of mine or if I am not a medical resident, please so state

(Please attach additional page if necessary)

Michael E. Marlowe
Chiropractor
Department of Physical Therapy

IMPORTANT: To Expedite Payment

Include Payee Number

No. *831*

Street Address

1141 West 3rd St.

City *Albuquerque*

State *N.M.*

Zip *87101*

HOSPITAL FEE BILL (For Emergency Use Only)

Date of emergency treatment _____

Service performed _____

Amount of bill \$ _____

The undersigned certifies that these services have been rendered for the claimant named herein.

Constituted

Witness

By _____

Address (Street) (Avenue) (Road) (Court)

Telephone (Area) (Number)

For Department Use - Do Not Fill Out

Hol. Serv. Hospital Medical Ambulance Other

Hospital Medical Ambulance Other

Hospital Medical Ambulance Other

Signature *Michael E. Marlowe*
Date *4-10-72*

Signature *John J. P. Jones*
Date *4-10-72*

282

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SAFETY CO-ORDINATORS

NOTE OF RECOVERY FROM DSAB NY

JUL 25 1972

EXAMINED

24 JUN 1972

JOINT

EXAMINATION

24 JUN 1972

RECEIVED

24 JUN 1972

EXAMINED

24 JUN 1972

JOINT

EXAMINATION

24 JUN 1972

234

Name of employee
 or disability.
 He/She may return to regular duty on ... light duty

Limitations, if any
 Signature
 City Physician

Doctor's Release

No Doctor's Release
 *Service connected disabilities must be certified separately by Chief City Physician. (See Ordinance # 900-65
 Section 15).

1st day off 8-22-72
 Return to work on 9-2-72
 Number of days off 3

Department or Division Head

CHD-EC-5 (3-66)

235

JUL 17 1972

SECTION III—REPORT OF TIME LOST

1. Employee's name BECKER, KENNEDY Date of injury 3-1-71
2. Date quit work 7-1-72 Date returned to work 2-13-72
3. Did employee return to light duty? regular duty?
4. Total CALENDAR days lost—not counting day of injury 12

Signature
 File
 Department of Division

File

Date

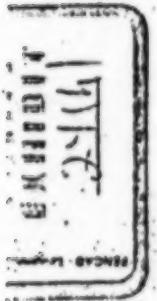
Division

of

Division

This portion must be filled out and
 returned to the Department of In-
 dustrial Relations just as soon as
 the employee returns to work.

WHAT DID THIS ACCIDENT COST YOU IN TIME, SUFFERING, INCONVENIENCE, MONEY?



SECTION III—REPORT OF TIME LOS

1. Employee's name BELCHICK, RAYMOND
2. Date quit work 3-22-72
3. Did employee return to: light duty? Yes
4. Total CALENDAR days lost—not counting days of injury 30 days

This portion must be filled out and returned to the Department of Industrial Relations just as soon as the employee returns to work.

WHAT DID THIS ACCIDENT COST YOU IN TIME, SUFFERING, INCONVENIENCE, MONEY?

McNamee, Belchick, et al.
Signature John E. Pegnati Title
Department or Division

March 24 1972
He was injured on 3-1-71 when he was attacked by three male subjects. Industrial papers were filed and claim date March 25, 1972 allowed by Industrial Commission. He was off from work on March 23, 1972 through April 21, 1972.
Chief City Physician April 21, 1972
Employees Clinic John E. Pegnati, Safety Coordinator

Normal balance _____ marked off on 3-22-72 due to
a reoccurrence of old back injury (PE#)
Reason for mark off: OLD BACK INJURY

Please indicate on this form: Injury on duty - deduct from injury leave
Not Injury on duty - deduct from sick leave

Chief City Physician _____
Return this form to Personnel; Room 500, Police Department
URG 512



Date - July 5, 1972.

Chief City Physician
Employees Clinic

Sick Leave _____ marked off on 7-1-72 due to
a recurrence of disability an injury on duty received on 2-1-72
(PE# 539994).

Reason for mark off: Off Duty Training
Cruiser accident

Please indicate on this form: Injury on duty - deduct from injury leave

Not Injury on duty - deduct from sick leave

Return this form to Patrolman Room 506, Police Department
Date 7-1-72

Chief City Physician

117 Department of Public Safety - Division of Police JUN 6 1972
NAME John Raasch ADDRESS 1610 Columbus, Ohio
PHONE 475-9941 RESIDENCE 2887 Broad St Time 1610
Reported Sick Injured, at K-10-AI 7-1-1972 I have notified Dr. Mesibw
to examine him, and have also notified Sgt Ball to investigate his matter.
Capt. B. A. L. C.
Officer in Charge of Headquarters.

DISABLED OFFICER'S STATEMENT

I hereby certify that I am Sick Injured, and that said disability was the result of.....

Old Back Injury (Ling = 3/1-71)
Date 7-1-1972 Signed Capt. W. D. O.

SUPERIOR OFFICER'S REPORT AND RECOMMENDATION 7-1-1972

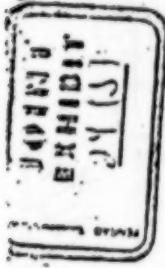
I have investigated the above case, and find the facts to be as follows:

ILLNESS: or
INJURY: ON DUTY OFF DUTY

Signed C. Ward #658 Rank Officer

Rec'd by
7-10

CITY OF COLUMBUS
DEPARTMENTAL REPORT OF INJURY OF EMPLOYEE



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This form must be completed, in duplicate (white and yellow), and forwarded to the Department of Industrial Relations within twenty-four hours following all injuries and/or occupational diseases. In every case the injured employee must report to his Employer's Clinic promptly, bearing admission notice from his immediate supervisor. When signed by the City Physician, Notice is returned by employee to his supervisor. In LOST TIME INJURIES the bottom portion, Section III, of this form must be detached and held by the Department or Division. This portion must be completed and returned to the Department of Industrial Relations as soon as the employee has returned to work. (Note: LOST TIME does not begin until the day following the injury). Be sure that every part of the report is completed and every question answered.

SECTION I

Employee's Name Ronald D. K. Belchick Age 35
Date of Injury 7-1-41 Date Reported 7-1-41 Time of Injury 1:15 P.M.

2. Describe in detail how accident occurred, giving exact location and any tools, machinery, or outside influence involved, and the part of body affected:

Ronald D. K. Belchick, aged 35, at time's end of 16th Street, in front of Belchick's Garage, 233 S. Summit Street, while working on a car. Caught his neck in the center of the engine compartment. Signature of Injured Employee

Witnesses to Injury, if any:

SECTION II

To Be Filled In By Supervisor

4. Severity of Injury: (Check One) First Aid Lost Time Death

5. Check the following unsafe acts and/or conditions that caused this accident.

UNSAFE ACTS

- a. Careless or unsafe operation
- b. Unauthorized operation
- c. Failure to use safety devices
- d. Failure to use safety equipment
- e. Foolish act (horseplay)
- f. Unsafe speed (too fast or slow)

Remarks:

6. Why did employee perform unsafe act or why did unsafe conditions exist?

7. What have you done to eliminate the unsafe acts or conditions that caused this injury?

RECEIVED IN THE DEPARTMENT OF INDUSTRIAL RELATIONS

First	Department or Division	Tel. No.
City or Town	Zip Code	
CO. 22	14778-1-229-742	
Name Tel. No.		

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UNSAFE CONDITIONS	a. Improper safety devices
	b. Improper safety equip.
	c. Improper safety clothing
	d. Improper or defective tools
	e. Improper training for job
	f. Hazardous layout
	g. Poor ventilation
8. Extent of Injury:	Abrasions <input checked="" type="checkbox"/> : Amputation <input type="checkbox"/> ; Contusion <input checked="" type="checkbox"/> ; Fracture <input type="checkbox"/> ; Sprain or Strain <input type="checkbox"/>
	Foreign Body <input type="checkbox"/> ; Hernia <input type="checkbox"/> ; Laceration <input type="checkbox"/> ; Other (explain fully) <input type="checkbox"/>
9. Part of Body Affected:	Arm(s): R. <input checked="" type="checkbox"/> L. <input type="checkbox"/> ; Back- Chest <input checked="" type="checkbox"/> ; Eye(s) R. <input type="checkbox"/> L. <input type="checkbox"/> ; Both <input type="checkbox"/> specify exact area of back affected
	Foot: R. <input type="checkbox"/> L. <input type="checkbox"/> ; Both <input type="checkbox"/> specify exact area which
	Hand(s): R. <input type="checkbox"/> L. <input type="checkbox"/> ; Both <input type="checkbox"/> specify exact finger(s) which
	Head: R. <input type="checkbox"/> L. <input type="checkbox"/> ; Leg(s) R. <input type="checkbox"/> L. <input type="checkbox"/> ; Internal <input type="checkbox"/> ; Interpal <input type="checkbox"/> Other (explain fully) <input type="checkbox"/>
10. First Aid Rendered by:	Dr. J. J. K. H. <input type="checkbox"/>
11. Name and Address of Attending Physician Dr. E. C. H. <input type="checkbox"/> N.O.C. <input type="checkbox"/>	Signature of Supervisor <u>C. J. Belchick</u> <input type="checkbox"/>

NOTE: For lost time because of injury, injury leave may be granted only upon approval of City Physician.

Civil Action No. 72-67

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

Eastern Division
(Title omitted in printing)

JOINT EXHIBIT 26

STATEMENT OF FACT of JAMES COMSTON, made in the presence of Detective Sergeant Pleasant Hopkins, Detective Marlin Hardin, Detective Ewell Young, and Pat Speakmon, Stenographer. Statement conducted in the Investigation Office, Third Floor, Central Police Station, Columbus, Ohio, on March 1, 1971, at 5:55 A.M. Questions by Det. Sgt. P. Hopkins. Notes and transcript by Stenographer Speakmon.

This statement is reference OR 7506-71, aggravated assault in the name of Raymond Lee Belcher.

* * * * * * * * *
Q. Would you state your name please? A. James Allen Comston.

Q. How old are you Mr. Comston? A. 37.

Q. Where do you live? A. 2345 N. 4th.

Q. Your 'phone number? A. 263-1258.

Q. I'm going to call your attention to an aggravated assault report 7506, which happened at 2338 Summit St., Jimmy's Cafe, at approximately 2 AM this date. Would you tell me in your own words what took place? A. Well, it was started out as an argument to begin with, then this woman jumped up slapped this guy and he hit her back, then that's when the officer got up, take, take a hand in it.

Q. Wait a minute, now there was an argument happened at the bar is that correct? A. Yes.

Q. Do you know anyone's name that was in that argument? A. I only know the woman.

Q. What is her name? A. Agnes.

Q. When this altercation was taking place, who was with you in your booth? A. There, it was Ray and my wife.

Q. By this you mean Raymond Lee Belcher, a Columbus Police Officer? A. Yes, he's an officer, but I didn't know his last name.

Q. When the altercation took place did Mr. Belcher get out of the booth? A. Yes, he got out of the booth.

Q. Was he going to the 'phone to call other officers, or what was his reason for getting out of the booth? A. That I don't know, he, all I know is that he got up out of the booth and the fight started, this guy had him on the floor and he shot.

Q. All right, by two guys you mean two guys that were in the bar in the altercation? A. Yes, three young kids.

Q. When they jumped on Ray as you know him, they knocked him to the floor is that correct? A. Yes.

Q. What happened after he was on the floor? Did anything take place while the policeman was on the floor? A. All I know I just heard shots.

Q. Did you see the officer spray any gas? Tear gas at anytime? A. No.

Q. Did you see the two gentlemen that were beating the officer, striking him or anything, what did they do? A. They was hitting him.

Q. What were they hitting him with? A. Their fist, they didn't have anything else, just their fists, and that third one he went out, he started outside and the officer went outside right behind him.

Q. Did you see anyone kick Ray? With their feet or stomp on him? A. No I didn't.

Q. Did you see a man with a red polka-dot shirt? A. Yes.

Q. Was this man attacking Ray? A. Yes, he was one of them.

Q. Just exactly how was he attacking him? A. He Ray had one of the guys, the one in the polka-dot he jumped Ray, on there to help his buddy out.

Q. I'll show you a picture #88379, would this be that gentleman? A. Yes, that's one of them.

Q. Do you have anything Detective Hardin? A. (Det. Hardin) No.

Q. Do you have anything Detective Young? A. (Det. Young) No.

Q. Calling your attention to the scene at the time, was there any physical evidence you found at the scene Detective Young you would like to put in this statement? A. (Det. Young) Yes, I found an expended .32 caliber casing in the southwest corner of this bar by the jukebox, and also found another casing of like caliber out on the sidewalk right beneath the window of this bar at 2338 Summit.

Q. All right, Mr. Comston, has anyone threatened or promised you anything for making these statements? A. No.

Q. Are they true to the best of your knowledge? A. Yes.

STATEMENT OF FACT.

TIME: 6:05 A.M.

Civil Action No. 72-67

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

Eastern Division

(Title omitted in printing)

JOINT EXHIBIT 42

<p align="center"><i>Report received 3/2/71 by J.P. this is initial</i></p> <p align="right">MAR 21 1971</p> <p>Date <u>3-1-71</u></p> <p><u>Raymond Bolcher</u> marked off on <u>3-1-71</u> due to _____</p> <p>a reoccurrence of or result of an <u>injury on duty</u> received on <u>3-1-71</u> <u>2:15 AM</u></p> <p><u>RE & Les process</u></p> <p>Please indicate on this form: Injury on duty - deduct from injury leave <input checked="" type="checkbox"/> Not Injury on duty - deduct from sick leave <input type="checkbox"/></p> <p><u>Attached by 3 male subject -</u></p> <p><u>Hrant Hospital E.R.</u></p>	<p>Reason for mark-off: <u>Abrasions and contusions about head neck , face, body</u></p> <p><u>Chief City Physician</u> <u>Employees Clinic</u></p> <p><u>Chief City Physician</u></p>
---	--

Return this form to Personnel, Room 500, Police Department

*Although this office uses "off duty" leave in
times of duty under circumstances relating to police duties
J.P.*

Civil Action No. 72-67

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

Eastern Division
(Title omitted in printing)

JOINT EXHIBIT 43

**CITY OF COLUMBUS, OHIO
DEPARTMENT OF PUBLIC SAFETY**

April 8, 1971

TO: Officer Raymond Lee Belcher, Badge 661
 THRU: Chief of Police
 RE: Board of Inquiry Proceedings relating to the
 incident of March 1, 1971 at Jimmie's Cafe,
 2838 Summit Street

Dear Officer Belcher:

I have reviewed the various materials forwarded to me by the Chief of Police consisting primarily of the statements, summaries, hospital files, progress reports, statements of fact, interim reports, use of force reports and other materials assembled in connection with the above captioned incident. I have also reviewed the various reports issued by the Bureau of Internal Affairs.

After a careful review of the above and following personal discussion with the various members of the Board of Inquiry, the Chief of Police and the Internal Affairs Bureau, it is my finding that the discharge of your weapon was proper under the circumstances and the injuries inflicted thereby were justifiable. Particu-

lar note is given to the fact that you attempted to defend yourself with chemical mace prior to the use of your weapon. It is further my opinion that at the time you discharged your weapon you were in great peril, unable to retreat and ultimately could have suffered great bodily harm or even death as a result of an unprovoked attack upon you.

The inquiry is hereby closed with a specific finding that your actions were in the line of duty, your weapon was used only in self defense and that you resorted to deadly force only after all other courses available to you had been exhausted. The Board of Inquiry is discharged and the case is dismissed.

Sincerely,

JAMES J. HUGHES, JR.

Civil Action No. 72-67

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

**Eastern Division
(Title omitted in printing)**

JOINT EXHIBIT 48

**CORONER'S REPORT.
FINDING OF FACTS AND VERDICT**

Rev. Code, Secs. 313.11 to 313.99

Coroner's Office, Franklin County, Ohio,
Columbus, Ohio, March 1st, 1971

INQUEST OVER THE DEAD BODY OF

Michael J. D. Noe

BE IT REMEMBERED, That on the 1st day of March in the year 1971, information was given to me, Robert A. Evans, M.D. Coroner of said Franklin County, Ohio, that the dead body of Michael J. D. Noe a person whose death occurred in a suspicious or an unusual manner, had been found within said County. Whereupon I went forthwith to Franklin County Morgue, Columbus, Ohio the place where such body was, and issued subpoenas to None such witnesses as I deemed necessary; and which subpoenas were duly returned endorsed as follows: None.

I administered the usual oath to said witness None and proceeded to inquire how the deceased came to his death, whether by violence to self or from any other person or persons, by whom, whether as principals or accessories before or after the fact, and all the circumstances relating thereto. The testimony of said

witnesses was reduced to writing and by them respectively subscribed.

After examining the body, hearing the evidence and statements of relatives and other persons having adequate knowledge of the facts, and securing such other information as was available, I made, or caused to be made, an autopsy by Franklin County Morgue, Columbus, Ohio.

I do find that the said deceased came to his death by Justifiable Homicide, Massive internal hemorrhage, Perforation of the heart, Bullet wound of the chest.

This 24-year-old white male was, allegedly, shot by a law enforcement officer as he was physically attacking the officer while in Jimmie's Cafe at 2338 Summit Street. He was pronounced dead-on-arrival at University Hospital at approximately 2:45 a.m., March 1, 1971.

Final Diagnosis: Bullet wound of the left chest. Puncture wounds of the left lung; left upper lung, left lower lobe. Laceration of the heart, left ventricle. Hemothorax, left 2600 cc. Hemopericardium, 50 cc. Fracture of the 9th vertebral body.

As I deemed it necessary, I caused said _____ witnesses attending as aforesaid, to enter into recognizance, in the sum of _____ Dollars, for their appearance at the succeeding term of the court of Common Pleas of said County, to give testimony concerning the matter aforesaid.

And said _____ witnesses attending as aforesaid, neglecting to comply with the requirements made, I committed _____ h____ to the prison of said County there to remain until discharged by due course of law.

I having found that the deceased came to h____ death by force or violence, and by _____

I forthwith informed the Prosecuting Attorney of said County of the facts as found.

The following is a description of the person over whose body the inquest was held:

Name Michael J. D. Noe

Residence 42 West Patterson Avenue, Columbus,
Ohio

Place of nativity America

Age 24 yr. Sex Male Color White

Color of eyes Brown Color of hair Light Brown

Marks.....

Height 5'9" Weight 155 lbs.

Occupation Driver for Hills Cab Company

Funeral arrangements by Southwick Funeral Home,
Columbus, Ohio.

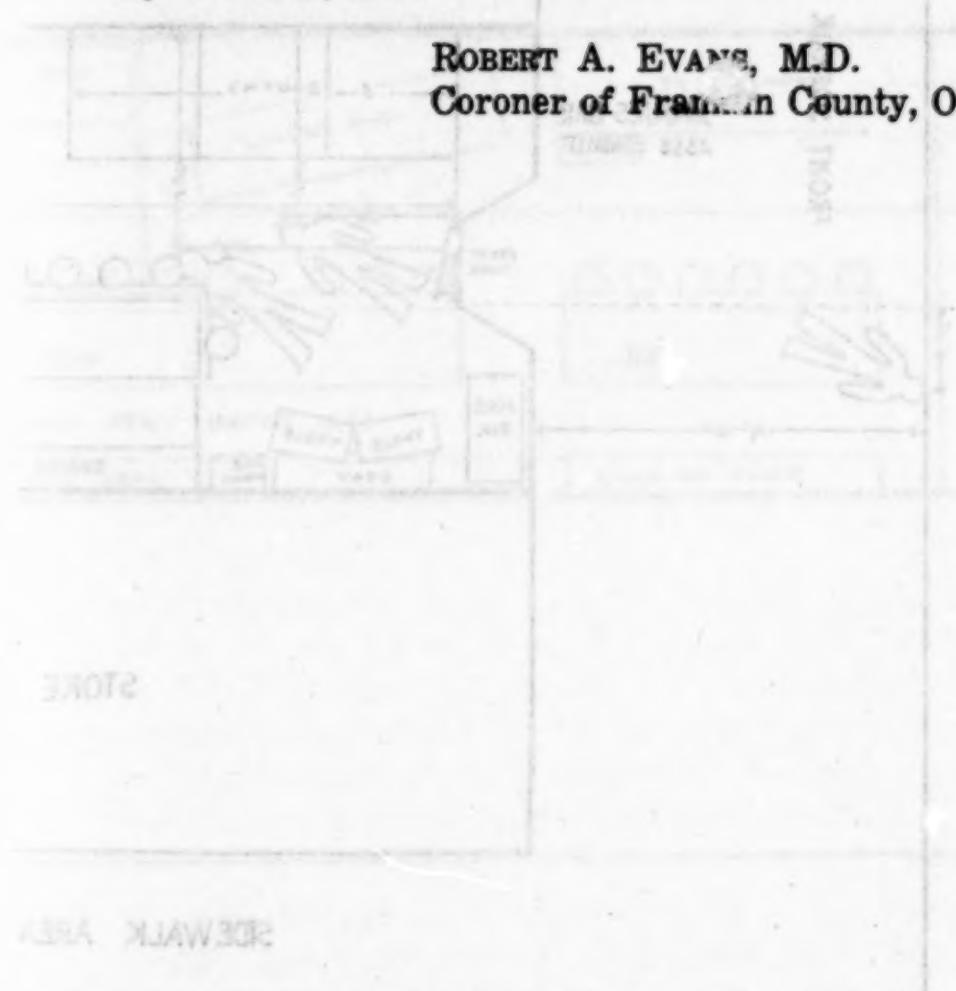
ROBERT A. EVANS, M.D.
Coroner of Franklin County, Ohio

The State of Ohio, Franklin County, ss.

I, Robert A. Evans, M.D. Coroner of said County, do hereby certify that the foregoing is my finding of facts, in writing and subscribed by me, upon the inquest held by me as such Coroner, over the dead body of Michael J. D. Noe found within said County, and whose death occurred in a suspicious or an unusual manner.

IN WITNESS WHEREOF, I have hereunto set by hand and affixed my seal at Columbus, Ohio, this 1st day of March, 1971.

ROBERT A. EVANS, M.D.
Coroner of Franklin County, Ohio

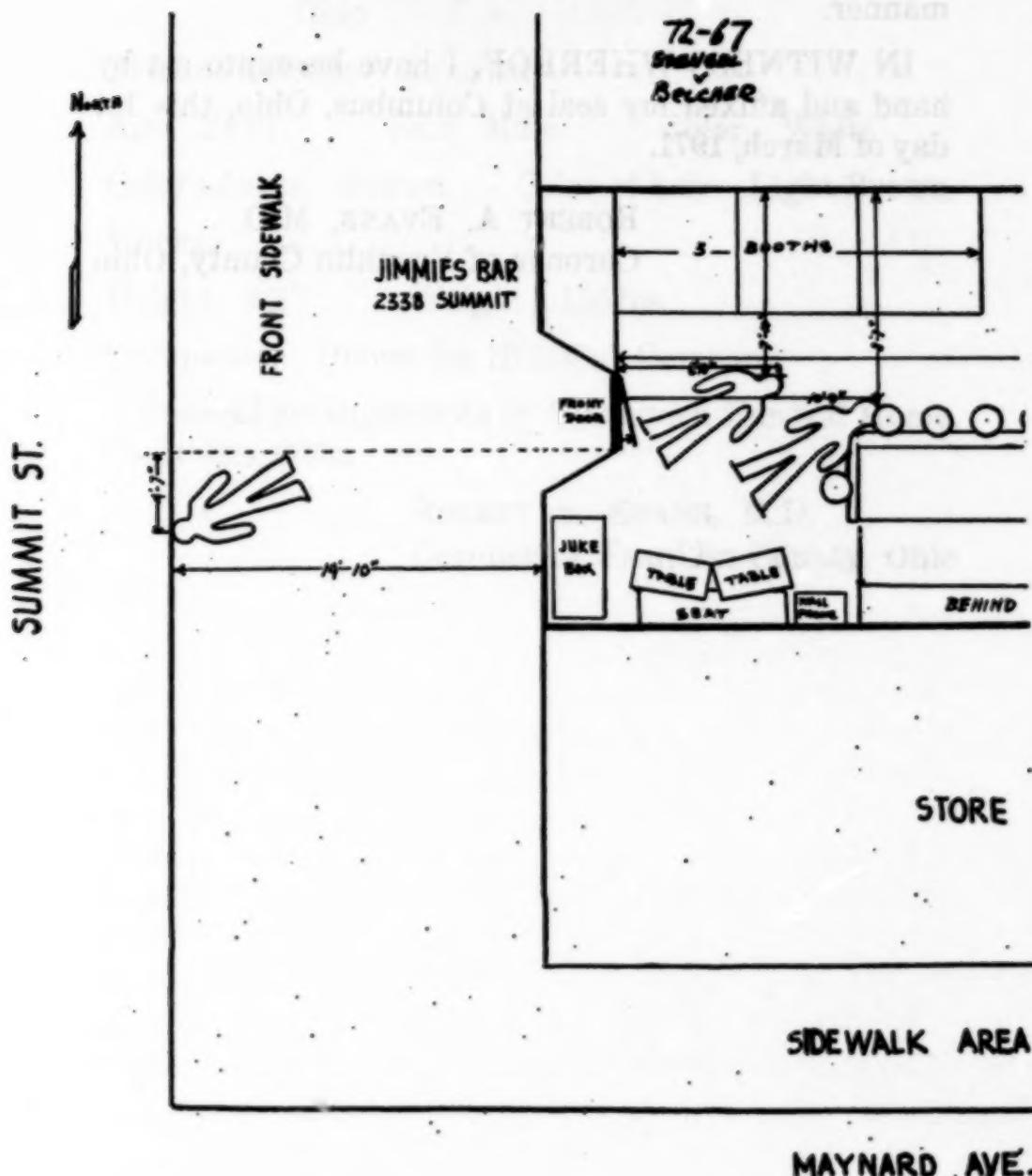


ROBERT A. EVANS, M.D.

Civil Action No. 72-67

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIOEastern Division
(Title omitted in printing)

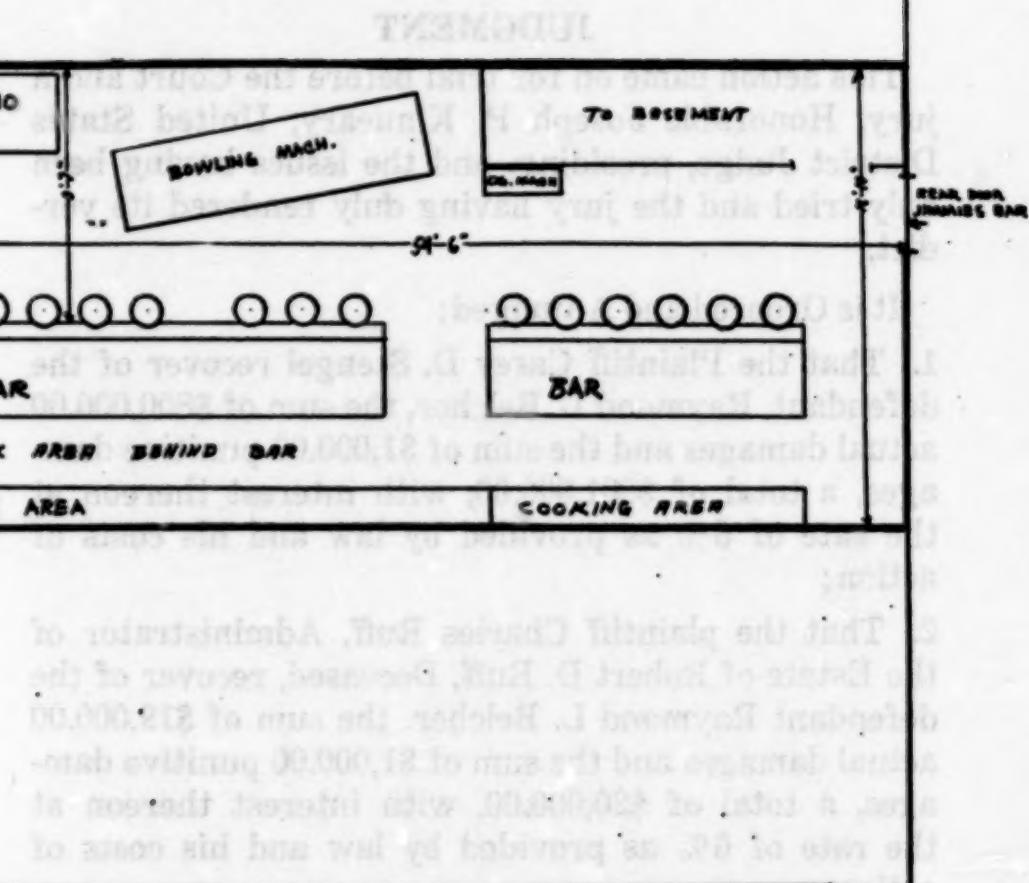
JOINT EXHIBIT 78



of the information contained herein is true and correct, and I am willing to make it available to the court or joint defense counsel upon the filing of the complaint and the date of action.

Dated at 10:37 a.m. on 5 month day of June
1972.

Is to be INDEXED
by
HANDBOOK OF PROCEDURE



To restate, Jimmies Bar is located at 2330 Summit Street. It is a single-story building with a front entrance on Maynard Avenue and a rear entrance on Summit Street. The building is approximately 54' wide and 20' deep. It contains a main room with a bar counter, a kitchen area with a stove and refrigerator, and a small room with a piano and a jukebox. There is also a staircase leading down to a basement. The building is owned by Jimmies Bar, Inc., and is operated as a bar and restaurant.

UNITED STATES DISTRICT COURT
for the
SOUTHERN DISTRICT OF OHIO,
EASTERN DIVISION

Civil Action File No. 72-67

CASEY D. STENGEL, et al.,
vs.
RAYMOND L. BELCHER

JUDGMENT

This action came on for trial before the Court and a jury, Honorable Joseph P. Kinneary, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged:

1. That the Plaintiff Casey D. Stengel recover of the defendant, Raymond L. Belcher, the sum of \$800,000.00 actual damages and the sum of \$1,000.00 punitive damages, a total of \$801,000.00, with interest thereon at the rate of 6% as provided by law and his costs of action;
2. That the plaintiff Charles Ruff, Administrator of the Estate of Robert D. Ruff, Deceased, recover of the defendant Raymond L. Belcher, the sum of \$19,000.00 actual damages and the sum of \$1,000.00 punitive damages, a total of \$20,000.00, with interest thereon at the rate of 6% as provided by law and his costs of action;
3. That the plaintiff Timothy Noe, Administrator of the Estate of Michael J. D. Noe, Deceased, recover

of the defendant Raymond L. Belcher, the sum of \$9,000.00 actual damages and the sum of \$1,000.00 punitive damages, a total of \$10,000.00, with interest thereon at the rate of 6% as provided by law and his costs of action.

Dated at Columbus, Ohio, this 19th day of June, 1974.

JOHN D. LYTER,
Clerk of Court

Civil Action No. 72-67

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

Eastern Division
(Title omitted in printing)

**MOTION OF DEFENDANT,
RAYMOND L. BELCHER,
FOR A JUDGMENT NOTWITHSTANDING
THE VERDICT, A NEW TRIAL AND/OR
AN ORDER ALTERING OR AMENDING
THE JUDGMENT**

Now comes the defendant, Raymond L. Belcher, and pursuant to Rule 50(B) and Rules 59(A) and (E) of the Federal Rules of Civil Procedure, moves this Court for a Judgment Notwithstanding the Verdict, a New Trial and/or an Order Altering or Amending the Judgment.

1. As grounds for the Motion for a Judgment Notwithstanding the Verdict, defendant submits that the Judgment is against the manifest weight of the evidence in that defendant's actions were done in self-defense and not under color of law and he is entitled to a judgment as a matter of law.

2. As grounds for the Motion for a New Trial, defendant submits that:

(A) The Court improperly refused to permit cross-examination about, or to admit into evidence testimony regarding the prior

acts of the plaintiff Casey D. Stengel and plaintiffs' decedents, Michael Noe and Robert Ruff, which was to be introduced for the purpose of

- (1) showing the character of the plaintiff and plaintiffs' decedents; and
- (2) impeachment of the plaintiff Casey D. Stengel; and
- (3) showing who was the aggressor in the altercation which gave rise to the cause of action; and
- (4) showing proof of motive, opportunity, intent, preparation and plan; and
- (5) showing evidence of habit.

(B) The Court, over objections of defense counsel, improperly admitted into evidence certain medical records without the testimony of expert medical witnesses; and

(C) The plaintiffs did not prove their damages beyond a reasonable certainty and thus let the jury speculate as to the amount and the nature of the damages; and

(D) The Court should not have charged the jury with respect to punitive damages because the record is devoid of any evidence of malice on the part of the defendant; and

(E) The verdict of the jury was based upon passion and prejudice.

3. As grounds for the Motion for an Order Altering or Amending the Judgment, the defendant submits that the verdict is excessive and must be remitted to an amount which conforms to the evidence submitted to the jury.

Each of the above three motions is submitted to the Court for consideration separately and in the alternative.

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CASEY D. STENGEL, et al

Plaintiffs

vs.

RAYMOND BELCHER,

Defendant

Civil Action 72-67

ORDER

This matter is before the Court on plaintiffs' motion for substitution of party plaintiff and on defendant's post-trial motions. Defendant has filed no memorandum contra to plaintiffs' motion. Plaintiffs have filed memoranda contra to defendant's motion, and defendant has filed a reply to plaintiffs' memoranda.

Plaintiff moves to substitute Albert J. Leshy as administrator for the estate of Michael J. D. Noe. The motion is filed pursuant to Rule 25, Fed. R. Civ. Proc. Leshy would be substituted for Timothy Noe, who has been named as administrator of Michael J. D. Noe's estate, but who died since the commencement of the action. Timothy Noe's death was suggested on the record of the case at trial which commenced on June 10, 1974. Plaintiffs' motion was filed August 12, 1974. It was timely filed.

Rule 14(b), Rules of the United States District Court, Southern District of Ohio, states that:

Upon the filing of the motion, memorandum and certificate, any memorandum contra shall be filed

within twenty (20) days from the date of filing. Failure to file a memorandum contra may be cause for the Court to grant the motion as filed.

Plaintiff's motion was filed on August 12, 1974. More than twenty days has elapsed since the filing of the motion.

Plaintiffs' motion is GRANTED.

Defendant timely moves for a judgment notwithstanding the verdict. The motion is filed pursuant to Rule 50(b), Fed. R. Civ. Proc. He also moves for a new trial or an altering or amending of the judgment. These motions are filed pursuant to Rules 59(a) and (e), Fed. R. Civ. Proc. Both of the Rule 59 motions have been timely filed. Because defendant moved for a directed verdict at the close of all the evidence, his motion is properly taken.

Defendant's motions are DENIED.

WHEREUPON, the Court determines the plaintiffs' motion to substitute a party plaintiff to be meritorious and it is therefore GRANTED, and defendant's motions for a judgment notwithstanding the verdict, for a new trial and for an altering or amending of the judgment to be without merit and they are therefore DENIED.

JOSEPH P. KINNEARY, *Chief Judge*
United States District Court